

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****Z.C. ORDER NO. 04-36****Z.C. Case No. 04-36****Consolidated Planned Unit Development and Related Zoning Map Amendment****Application of Dorchester House Associates LLC and Kalorama West LLC****(Square 2572, Lot 35)****May 8, 2006**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 30 and April 13, 2006 to consider an application from Dorchester House Associates LLC and Kalorama West, LLC for the consolidated review and approval of a planned unit development and related amendment to the Zoning Map for Lots 815 and 816 (record Lot 35) in Square 2572, pursuant to Chapter 24 of the District of Columbia Municipal Regulations ("DCMR") Title 11 (Zoning). For the reasons stated below, the Commission hereby denies the application.

**FINDINGS OF FACT****Preliminary Matters**

1. On December 16, 2004, Dorchester House Associates LLC and Kalorama West LLC (together, the "Applicant") filed an application for review and approval of a planned unit development ("PUD") and a related amendment to the Zoning Map of the District of Columbia for record Lot 35 in Square 2572 (the "Property"). The Applicant sought a Zoning Map amendment for the western portion of the Property so that the entire site would be zoned R-5-D.
2. At a public meeting on March 14, 2005, the Commission voted to set down the application for a public hearing. Thereafter, on September 15, 2005, the Commission reconsidered its original decision to set the application down for a hearing so as to address the issue of whether a trellis, proposed by the Applicant to connect the existing building to proposed new construction, would be sufficient to consider the project a single building. The Commission decided to set the application down in two alternatives: the Applicant could propose to create a single building on the Property through the construction of a "substantial connection" between the existing building and the new addition or the Applicant could seek relief to have two buildings on a single record lot. The Applicant subsequently revised the project to include a more significant connection

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between the existing Dorchester House apartment building and the proposed new construction.

3. A public hearing on the application was conducted in accordance with 11 DCMR § 3022. At the hearing, the Commission granted party status in opposition to the application to the Dorchester Tenants Association and the Reed-Cooke Neighborhood Association. The Commission denied requests for party status from various individual residents of the Dorchester House and from the Dorchester Rent Rollback Organization. Advisory Neighborhood Commission ("ANC") 1C, the ANC in which the Property is located, was automatically a party in this proceeding.

### **PUD Application and Project**

4. The project site consists of Lots 815 and 816 (record Lot 35) in Square 2572, in the Adams Morgan neighborhood of Ward 1. The Property is an irregularly-shaped parcel with a land area of approximately 158,150 square feet and frontage on 16<sup>th</sup> Street, Kalorama Road, 17<sup>th</sup> Street, and Euclid Street.
5. The Property is improved with the Dorchester House, a large apartment building containing approximately 394 apartments, with the address of 2480 16<sup>th</sup> Street, N.W. A surface parking lot is located at the rear of the apartment building.
6. The Property is currently split-zoned. The eastern portion, improved with the apartment building, is located in the R-5-D zone. The western portion, the site of the parking lot, is zoned R-5-B.
7. The area surrounding the Property contains apartment buildings, rowhouses, and Meridian Hill/Malcolm X Park. The Euclid Mews townhouses and condominium apartments are located to the northwest of the Property. Rental apartments in two projects are located across 17<sup>th</sup> Street to the west, and the Citadel building, a former roller-skating rink being redeveloped as a grocery store and office space, is located to the south and southeast of the Property.
8. The Property is located in the medium- and moderate-density residential land use category as shown on the District of Columbia Generalized Land Use Map.
9. The PUD application requested approval of an addition to the existing apartment building, to be constructed on the site of the surface parking lot on the western portion of the Property (the "Addition"). The Addition would contain 145 to 151 rental residential units, for a total of approximately 545 rental apartments on the Property. The Addition would have a total gross floor area of approximately 182,510 square feet.

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10. The Addition would contain two levels of below-grade parking, providing approximately 307 parking spaces for residents and guests of the Addition and the existing building. The upper level and the loading berth for the Addition would be accessed from 17<sup>th</sup> Street; the loading berth and trash receptacles would be located entirely inside the garage. The lower level and the existing building's loading berth would be accessed from Kalorama Road, in the same location as the driveway to the existing parking lot and the existing loading area.
11. The connection between the existing building and the Addition would contain approximately five new residential units and would create a hallway that would allow internal circulation between the existing building and the Addition. The connection would be two stories tall on the 17<sup>th</sup> Street (southwest) side of the hallway and three stories tall on the 16<sup>th</sup> Street (northeast) side.
12. The Applicant stated that rezoning the Property to R-5-D was needed to allow the Addition to obtain the requested height and that the proposed density of the Addition was needed in part to defray the costs of constructing the parking garage.
13. The existing surface lot provides 131 parking spaces. After construction of the Addition, the Zoning Regulations would require approximately 182 parking spaces at the Property.
14. The Addition would be six stories in height (58 feet, 6 inches as measured from the center of the 17<sup>th</sup> Street frontage), with two additional floors set back approximately 28 feet from the property line, for a total height of 78 feet measured from 17<sup>th</sup> Street. A deck would be provided on the terraced setback on the roof of the sixth floor overlooking 17<sup>th</sup> Street. The Addition would step down to the northern property line, where the building height would be 45 feet (four feet higher than the abutting Euclid Mews development).
15. The Applicant provided a sight-line study depicting the visual impact of the Addition along 17<sup>th</sup> Street. The study showed that the tallest portion of the Addition would not be visible from the west side of 17<sup>th</sup> Street at the ground level. The Applicant also prepared a sight-line study depicting the visual impact of the Addition from the intersection of 17<sup>th</sup> Street and Kalorama Road. The latter study showed that a portion of the Addition would be visible from the intersection.
16. The right of way on 17<sup>th</sup> Street is 50 feet wide, with a curb-to-curb width of approximately 30 feet. Parking is permitted on both sides of the street.
17. The maximum building height permitted as a matter of right in the R-5-B zone is 50 feet. (11 DCMR § 400.1.) A maximum height of 60 feet may be permitted with a PUD in the R-5-B zone. (11 DCMR § 2405.1.)

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18. The front of the Property is 16<sup>th</sup> Street, where the property is zoned R-5-D. The R-5-D Zone permits a maximum building height of 90 feet. The height of the existing building is 90 feet.
19. The Addition and the existing building would be considered a single building for zoning purposes if a substantial connection existed between the two structures. If considered a single building, the permitted height of the expanded building would be measured from the front of the Property, that is, 16<sup>th</sup> Street.
20. The Applicant requested flexibility from provisions of the Zoning Regulations requiring that (a) all roof structures must be located in a single enclosure, all roof structures must be set back from all exterior walls a distance equal to their height above the roof, and all roof structures must be the same height; (b) a 30-foot rear yard must be provided; and (c) all standard parking spaces must have minimum dimensions of 9 feet by 19 feet and all drive aisles must be a minimum of 20 feet wide.
21. The Applicant stated that the following public benefits and project amenities would be created through the proposed PUD:
  - (a) Housing and affordable housing: The PUD would create 145 to 151 new rental residential units, with the Applicant reserving 30 percent of the bonus density achieved through approval of the PUD (approximately 30,000 square feet of gross floor area) as affordable units for households having an income not exceeding 80 percent of the Area Median Income ("AMI") for the Washington, DC Metropolitan Statistical Area (adjusted for family size).
  - (b) Urban design and architecture: According to the Applicant, the Addition would provide a transition from the higher density of 16<sup>th</sup> Street to the lower scale residential neighborhood to the west.
  - (c) Site planning: The PUD would have a landscaped interior courtyard and would have a lot occupancy of 46.5 percent, less than the maximum permitted. The existing surface parking lot would be replaced with the Addition, while the total landscaped area and number of parking spaces on the Property would be increased.
  - (d) Effective and safe vehicular and pedestrian access: The Applicant's traffic expert concluded that traffic generated by the Addition would not significantly impact the roadway network and that no mitigation measures (other than retiming a traffic signal at the intersection of 16<sup>th</sup> and Euclid Streets) would be necessary to accommodate site-generated traffic. The traffic expert also concluded that the Addition would not increase demand for on-street parking in the neighborhood, because the proposed parking spaces were expected to be sufficient to

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accommodate the expansion. The Applicant agreed to limit the length of trucks that would come to the Property to 40 feet.

- (e) Uses of special value: The Applicant proffered community amenities that would provide uses of special value to the surrounding neighborhood, including:
- (i) Jubilee Support Alliance: The Applicant would contribute \$100,000 to the Jubilee Support Alliance for use by Jubilee Housing in the renovation of the Ritz Apartment building at 1631 Euclid Street, N.W.
  - (ii) Washington Parks & People: The Applicant would contribute \$20 per unit in both the existing building and the Addition for a period of 20 years, providing a total value of \$218,000 and a present value of \$137,897, to Washington Parks & People for use in specific park-related programs.
  - (iii) Environmental benefits: The Applicant asserted that the Addition would have environmentally appropriate attributes, especially related to stormwater management and energy-efficient building materials and systems.
  - (iv) Employment and training opportunities: The Applicant indicated its intention to execute a First Source Employment Agreement with the Department of Employment Services and a Memorandum of Understanding with the Office of Local Business Development.

### **Government Reports**

22. The Office of Planning ("OP"), in its report dated March 20, 2006 and through its testimony at the public hearing, recommended approval of the application, provided that the project did not require relief from the required rear yard, which would serve as the functional front of the new construction and subject to the resolution of specific details regarding the proffered amenity package. OP stated that the proposed use would be in character with the neighborhood and that the proposal was generally consistent with the Comprehensive Plan<sup>1</sup>, the Generalized Land Use Map, and the intent of the Zoning Regulations.
23. OP testified that the Applicant's proposed connection between the Addition and the existing building would be acceptable as a real connection, noting its size and its function: the connection would contain apartments as well as providing internal circulation. According to OP, the existing building and the Addition would be one building for zoning purposes, such that the proposed height of the Addition along 17<sup>th</sup> Street would be consistent with the Height Act. OP testified that the proposed Addition would be appropriate at the site, noting that modifications had been made to the project as

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<sup>1</sup> All references to the Comprehensive Plan are to the version of the plan in effect when this case was decided and not the amended version in effect on the date this Order is published.

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initially proposed, including the setting back of the upper floors and the setting back of the Addition at the northern property line.

24. The District Department of Transportation ("DDOT") submitted a report dated March 21, 2006 in support of the PUD project. DDOT reviewed the proposal in terms of trip generation and levels of service near the site; parking and loading; a traffic improvement program intended to improve access, safety, and circulation in the area; and the availability of public transportation to serve the development.

#### ANC 1C

25. At a public meeting on March 1, 2006, with a quorum present, ANC 1C voted 8-0 to adopt a resolution in opposition to the application. The ANC expressed concerns that: (a) the height and density of the proposed project were inconsistent with the current zoning of the parcel where the Applicant sought permission to build the Addition, inconsistent with the Comprehensive Plan designation for the parcel, and inappropriate for the area of the community in which the height and density were sought; (b) the height and density of the proposed project would have adverse impacts on the surrounding area that would be unacceptable and not capable of being mitigated; (c) the proposed map amendment that would enable the requested height and density was inappropriate for the narrow street on which the parcel is located; and (d) the proposed public benefits associated with the project were illusory and inadequate given the size of the proposed project and the extent of the zoning relief being sought.
26. In its report, ANC 1C challenged the Applicant's assertion that rezoning the western portion of the Property to R-5-D would be consistent with the goals and policies of the Comprehensive Plan. Instead, ANC 1C asserted that the current R-5-B zoning was appropriate for the site, given its location on a narrow street and adjacent to other narrow streets.

#### Parties in Opposition

27. The Reed-Cooke Neighborhood Association ("RCNA") presented written statements and testimony at the public hearing in opposition to the application. RCNA stated its support for development that would fit the character, size, and scale of the neighborhood. However, RCNA opposed approval of the PUD application on the grounds that the proposed height of the Addition was excessive for a parcel abutting the Reed-Cooke Overlay and that the density of the proposed project would create adverse impacts related to increased traffic congestion. According to RCNA, the size and scale of the proposed Addition was too large for a building fronting on a narrow residential block of 17<sup>th</sup> Street.
28. The Dorchester Tenants Association also presented written statements and testimony at the public hearing in opposition to the application. The Association challenged the value

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of the public benefits and project amenities proffered by the Applicant relative to the requested zoning flexibility and urged the Commission to deny the application on the grounds that the PUD would cause adverse impacts related to parking and traffic.

### **Persons in Opposition**

29. The Commission received letters or heard testimony from a number of people opposed to the proposed PUD. The statements in opposition to the application generally contended that the Addition would be too large for its location and would generate adverse impacts related to traffic, parking, and loss of open green space on the Property.

### **NCPC**

30. Christine Saum, the director of the Urban Design and Plan Review Division of the National Capital Planning Commission ("NCPC"), filed a written statement and presented testimony in opposition to the project. Because NCPC had not formally reviewed the application, the testimony was presented on behalf of the NCPC staff. The NCPC staff recommended denial of the requested Zoning Map amendment, stating that the allowable height for the proposed building fronting on 17<sup>th</sup> Street should be no greater than 50 feet. According to the NCPC staff, while the proposed connection between the existing building and the planned Addition might be sufficient to satisfy the method set forth in the Zoning Regulations for determining building height, the proposed height of the Addition would not be consistent with the intent of the Height Act, because the new construction would appear to be a new building fronting on 17<sup>th</sup> Street, separate from the existing apartment house.

### **CONCLUSIONS OF LAW**

1. The planned unit development process is designed to encourage high-quality developments that provide public benefits. (11 DCMR § 2400.1.) The overall goal is to permit flexibility of development and other incentives, such as increased building height and density, provided that the project offers a commendable number or quality of public benefits and that it protects and advances the public health, safety, welfare, and convenience. (11 DCMR § 2400.2.) In deciding a PUD application, the Commission must judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. (11 DCMR § 2403.8.) The impact of the project on the surrounding area and on the operation of city services and facilities must not be found to be unacceptable, but must instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. (11 DCMR § 2403.3.)

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2. The Applicant proposed to construct a new project on a parcel currently devoted to a surface parking lot at the rear of an existing apartment building. Because the parcel is part of a larger record lot that fronts on more than one street, the Applicant may select which side of the lot is the front for zoning purposes. Assuming construction of a meaningful connection between the new project and the existing building on the lot, the new construction would be considered part of a single building, whose height would be measured from the front of the property.
3. With regard to the measurement of building height, the Applicant's proposal is permissible under both the Building Height Act of 1910, D.C. Official Code, § 6-601.05(b) (2001), and the Zoning Regulations. Pursuant to the Height Act, the "height of a building on a corner lot will be determined by the width of the wider street." (D.C. Official Code § 6-601.05 (d).) The definition of "building height" in the Zoning Regulations states that if a building fronts on more than one street, any front may be used to determine the maximum height of the building, but the basis for the height of the building will be determined by the width of the street selected as the front of the building. (11 DCMR § 199.)
4. Whereas the Addition could be considered part of a single building if connected to the existing 90-foot apartment building, the maximum height permitted as a matter-of-right or through the PUD process on the western portion of the Property is currently limited by its R-5-B zoning designation. The Applicant sought to increase the permitted building height for the proposed Addition through a PUD-related map amendment to the R-5-D zone, which already applies to the eastern portion of the Property.
5. The Commission was not persuaded that the proposed density and height of the Addition – 58 feet, six inches, rising to a maximum of 78 feet as measured from 17<sup>th</sup> Street – would be appropriate for its location. The proposed Addition would face a narrow street at a height significantly greater than the maximum height currently permitted on the site. The Commission concurs with ANC 1C, the NCPC staff, and the parties in opposition that the height and density of the proposed Addition would be inappropriate for that location, especially considering the narrow width of 17<sup>th</sup> Street and the relatively lower scale of the nearby Reed-Cooke Overlay district, and would have adverse impacts on the surrounding area that would be unacceptable and not capable of being mitigated. The Commission concludes that the proposed PUD would not protect or advance the public health, safety, welfare, and convenience, because the impact of the project on the surrounding area would be unacceptable and not capable of being mitigated.
6. The Commission was not persuaded by the Applicant's arguments concerning the need for additional height and density in the proposed PUD. The Applicant indicated that the requested density was needed to pay for the construction of underground parking that would replace the surface lot and to provide parking for the new development. However,



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the Applicant's proposal to provide approximately 300 parking spaces would exceed the zoning requirement by more than 100 spaces.

7. The Commission accorded the recommendation of OP the "great weight" to which it was entitled pursuant to D.C. Official Code § 6-623.04 (2001). The Commission was not persuaded by the OP's finding that the proposed height of the Addition would be acceptable given that a maximum of 60 feet could be permitted with a PUD under the existing R-5-B zoning and the Addition would appear slightly less than 60 feet from 17<sup>th</sup> Street. In fact, although the Applicant's initial plans were modified to propose a lower building, the Applicant sought approval of new construction that would rise to a maximum height of 78 feet facing 17<sup>th</sup> Street.
8. The Commission accorded the issues and concerns raised by ANC 1C the "great weight" to which they are entitled pursuant to D.C. Official Code § 1-308.10(d) (2001). The Commission generally concurred with the recommendation of ANC 1C to deny the application, especially with respect to the ANC's assertions that the proposed map amendment to R-5-D would be inappropriate at the location of the proposed Addition.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **DENIAL** of the application from Dorchester House Associates LLC and Kalorama West LLC for the consolidated review and approval of a planned unit development and related amendment to the Zoning Map for Lots 815 and 816 (record Lot 35) in Square 2572.

On May 8, 2006, the Zoning Commission **DENIED** the application by a vote of 4-0-1 (John G. Parsons, Anthony J. Hood, Carol J. Mitten, and Gregory N. Jeffries to deny; Michael G. Turnbull, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on **OCT 26 2007**.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**Z.C. ORDER NO. 05-24A**  
**Z.C. Case No. 05-24A**  
**(Minor Modification to Approved Planned Unit Development for**  
**Eastgate Family Housing)**  
**February 12, 2007**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on February 12, 2007. At the meeting, the Commission approved an application from the District of Columbia Housing Authority and the associated private development team of A & R/THC II LLC (together, the "Applicant") for a minor modification to an approved planned unit development ("PUD") for specified properties bounded by Fitch, 51<sup>st</sup> and F Streets; Benning Road; and Queen's Stroll Place (Drake Place), S.E. The property is identified as Lots 9-20 in Square 5318, Lots 20-36 in Square 5319, and Lots 29-36 in Square 5320. Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that this modification request was proper before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations (11 DCMR).

**FINDINGS OF FACT**

By Zoning Commission Order No. 05-24, dated April 20, 2006, the Commission approved a PUD for multiple properties in Squares 5318, 5319, and 5320. The PUD site is a rolling hillside of approximately 698,382 square feet of land, or 16.03 acres. The Order approved the construction of a large community redevelopment project that comprises a total of 186 new residences including: 20 detached houses, 158 row dwellings, and two grand houses with four units in each building. The redevelopment plan also provides for closing and realigning several existing streets and alleys and creating new streets and alleys. Forty-three percent (43%) of the units will be in the low-income range, twenty-three percent (23%) will be in the moderate-income range, and thirty-four percent (34%) will be market rate. The PUD site is zoned R-5-A.

The application stated that the requested modifications to Zoning Commission Order No. 05-24 derive from meetings conducted by members of the Applicant's team with representatives of the District Department of Transportation ("DDOT") in conjunction with obtaining building permits. At those meetings, DDOT staff in the public space division objected to a number of locations where driveways would be less than 28 feet apart. The Zoning Commission had approved these driveways utilizing its authority to grant flexibility from the requirements of § 2117.8(d) of the Zoning Regulations, which requires that driveways be located at least 28 feet apart. Prior to the PUD hearing, DDOT had recommended against this condition on the basis that it would decrease on-street parking. However, the Commission approved it over DDOT's objection, based upon

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testimony from the Applicant's engineers and transportation expert that the alternative of rear alley access to garage units as recommended by DDOT was infeasible and not favored by the community. The Applicant's experts also demonstrated, with concurrence by the Office Planning ("OP"), that the alternative of shared driveways, also suggested by DDOT, actually decreased available parking to the project, because it eliminated more parking spaces on driveways than it freed on the adjacent streets.

The building permits for the project have been delayed since December 2006 while these meetings and negotiations took place. The Applicant finally concluded that the only feasible means of moving the project forward in a timely way, as required by its lenders and the Department of Housing and Community Development, was to delete the driveways and garages for the remaining affected 35 units. These properties are located along F Street and Queen's Stroll Place, S.E.

The Applicant submitted site plans indicating the removal of the affected driveways and curb cuts and the related relocation of walkways. The application stated that 68 parking spaces are lost as a result of the modification, including garage spaces and driveway spaces in some units, but that 48 parking spaces are gained along the curb. The remaining 151 units in the PUD have off-street parking. At the public hearing on the original application, the Applicant identified 345 parking spaces for the entire site, including garage, parking pad, driveway, and internal on-street spaces. The parking ratio (off- and on-street) for the entire site was thus 1.8 spaces per dwelling unit. The new total, as a result of this PUD modification, will be 277 parking spaces for the entire site (114 garage, 123 driveway, and 40 on-street, internal to the site), for 186 units, a ratio of 1.5 spaces per dwelling unit.

In summary, by removing the curb-cuts, the project only loses one-third of the off-street parking along the affected two streets. That is, 35 homes lose driveways and parking, but 48 spaces are gained curbside, at a ratio of 1.4 spaces per home. As a result, the PUD overall maintains higher than a 1:1 parking ratio.

There was no opposition to this minor modification request. Advisory Neighborhood Commission ("ANC") 7E was served by the Applicant with the requested modification, and the Applicant consulted with ANC Commissioners. The ANC, however, did not submit a written report. OP submitted a report dated February 6, 2007 that recommended approval of the minor modification.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Zoning Commission finds that the proposed modification is minor and consistent with the intent of the previously approved Zoning Commission Order No. 05-24. Further, the Commission concludes that its decision is in the best

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interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

The approval of the modification is not inconsistent with the Comprehensive Plan.

Further, the proposed modification resolves transportation safety matters raised by DDOT, while not unduly affecting the site plan. The reduction in off-street parking is minor, considering the numerous on-street as well as off-street parking spaces provided by the PUD plan.

The modification is so minor that consideration as a Consent Calendar item without a public hearing is appropriate.

On February 12, 2007, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the minor modification to the approved PUD. The Commission concurs with the Applicant that approving the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders approval of the application for a minor modification of an approved PUD. Condition No. 6 of Order No. 05-24 is hereby revised to read:

"There shall be a minimum of 277 on-site parking spaces that conform to zoning standards, plus approximately 123 spaces in driveways and 40 curbside spaces as depicted on the plans, for a total of 277 parking spaces."

This modification was **APPROVED** by the Zoning Commission at its public meeting on February 12, 2007, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to approve.)

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on **OCT 26 2007**.

**ZONING COMMISSION ORDER NO. 05-38****Zoning Commission Case No. 05-38****Consolidated Planned Unit Development and Related Amendment to the Zoning Map –  
Marina View Trustee, LLC (Square 499, Lots 50 and 853)****May 14, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on February 28, 2007 to consider an application from Marina View Trustee, LLC (“Applicant”) for the consolidated review and approval of a planned unit development (“PUD”) and a related amendment to the zoning map of the District of Columbia from the R-5-D Zone District to the C-3-C Zone District for Lots 50 and 853 in Square 499 pursuant to Chapter 24 of the District of Columbia Municipal Regulations (“DCMR”) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on April 9, 2007, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record, subject to conditions.

The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. The NCPC Executive Director, through a Delegated Action dated May 10, 2007, found that the proposed PUD would not be inconsistent with the Comprehensive Plan nor would it have any adverse impact on any federal interest.

The Commission took final action to approve the application, subject to conditions, on May 14, 2007 by a vote of 4-0-1.

**FINDINGS OF FACT****PUD SITE**

1. The property that is the subject of this application is Lots 50 and 853 in Square 499. It is bounded by K Street, S.W. to the north; M Street, S.W. to the south; 6<sup>th</sup> Street, S.W. to the west; and the site formerly known as Waterside Mall to the east (the “Subject Property” or “Property”). The Property consists of approximately 135,263 square feet of land and is currently occupied by two residential towers. (Exhibit 26, p. 2.)
2. The PUD site is located in the R-5-D Zone District and the Medium-Density Commercial land use category on the Generalized Land Use Map of the Comprehensive Plan. The

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Applicant requested a rezoning of the entire site to the C-3-C Zone District in the context of the PUD. (Exhibit 26, p. 1.)

3. Two existing residential structures, known as the Marina View Towers, currently occupy the site ("Pei Towers"). Surface parking lots occupy the northern and southern ends of the Property. The Marina View Towers were designed by I.M. Pei and are an example of his modernist design as well as the design typical in Southwest D.C. during the 1960s. (Exhibit 26, Exhibit B.)
4. The Waterside Mall is directly east of the Property and consists of 13.4 acres that was rezoned to the C-3-C Zone District in a first-stage PUD approval pursuant to Zoning Commission Order No. 02-38. (Exhibit 2, pp. 4-5; Exhibit 26, p. 2.)
5. Arena Stage is located directly to the west of the Property across 6<sup>th</sup> Street and is located in the Medium-Density Residential category of the Generalized Land Use Map. (Exhibit 2, p. 5; Exhibit 26, p. 2.)
6. Directly to the north of the Property, across K Street, is the west end of Town Center Park which is designated as Parks, Recreation, and Open Space on the Generalized Land Use Map. (Exhibit 2, p. 5; Exhibit 26, pp. 2-4.)
7. Directly south of the Property is a mixture of medium- and moderate-density residential buildings in the Tiber Island residential complex. (Exhibit 2, p. 5; Exhibit 26, p. 2.)
8. The Property is located less than two blocks from the Waterfront-SEU Metrorail Station at 4<sup>th</sup> and M Streets, S.W. (Exhibit 26, p. 3.)

#### PROCEDURAL HISTORY

9. The Applicant filed an application for consolidated review and approval of a PUD and a related amendment to the Zoning Map of the District of Columbia on November 30, 2005. (Exhibit 2.)
10. The application initially proposed a building height of 120 feet for the two new buildings to be constructed on the existing surface parking lots. At its March 13, 2006 public meeting, the Commission voiced concern about the height of the proposed buildings and asked the Applicant to reconsider its design. (Exhibit 2, Exhibit F.)
11. The Applicant filed a supplemental submission on June 16, 2006 with revised plans for the new buildings at a height of 112 feet, with the top floor set back at a one-to-one ratio at 102 feet on the M, K, and 6<sup>th</sup> Streets sides of the new structures. The Applicant also changed the footprint of the new buildings to feature a contraflexive "S" curve to

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complement the flat, highly ordered, regular grid of the facades of the Pei Towers. (Exhibit 26, Exhibit A.)

12. The Commission considered the revised application at its July 24, 2006 public meeting and voted 5-0-0 to set the case down for a public hearing.
13. The Applicant filed its pre-hearing statement with the Office of Zoning on October 12, 2006 and a public hearing was scheduled before the Commission for February 15, 2007. Due to weather conditions on February 15, 2007, the public hearing was postponed until February 28, 2007. Notice of the new hearing date was posted in the Pei Towers.
14. At the February 28, 2007 public hearing, Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP presented the case on behalf of the Applicant. The Commission accepted Phil Esocoff of Esocoff & Associates as an expert in architecture, Donald Richardson of Zion Breen & Richardson Associates as an expert in landscape architecture, and Lou Slade of Gorove/Slade as an expert in traffic and parking.
15. The Commission denied a request from Tiber Island Cooperative Homes, Inc. ("Tiber Island") and Paul Greenberg for party status in opposition to the application. Advisory Neighborhood Commission ("ANC") 6D, whose boundaries include the PUD site, was automatically a party in this proceeding.
16. At the close of the hearing, the Commission requested additional information regarding the Applicant's commitment to a minimum number of points on the LEED scorecard, the condominium discount purchase program and alternative amenities, the proposed rental program for existing tenants, a reduction in the amount of parking provided with the PUD, the phasing of the PUD, details about the lighting on the Property, and the feasibility of an increased setback along M Street. The Applicant filed its post-hearing submission on March 12, 2007. (Exhibit 69.)

#### PUD APPLICATION AND PROJECT

17. The PUD will preserve the two existing Pei Towers and will include two new residential structures at the north and south ends of the Property, replacing existing surface parking lots. (Exhibit 26, p. 4.)
18. The two new buildings will contain 285 to 315 residential units and the Pei Towers will include approximately 255 units. The Applicant anticipated a mixture of rental and for-sale units in this project. (Exhibit 26, p. 4.)
19. The new south building will provide approximately 8,900 square feet of ground-floor retail space, with a 14-foot ceiling height, along M Street. This retail space will provide an opportunity for a restaurant at the intersection of M and 6<sup>th</sup> Streets, facing the Arena Stage. (Exhibit 26, p. 4.)

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20. The new buildings will rise to approximately 102 feet, with an additional top floor set back at a one-to-one ratio on the M, K, and 6th Streets sides of the new structures, for a total building height of 112 feet. The measuring point used for the calculation of building height was the midpoint of the Subject Property's frontage along M Street. (Exhibit 26, p. 4.)
21. The Delegated Action of the NCPC Director, attached to her letter to the Commission dated May 10, 2007 (Exhibit 74), requested that these Findings of Fact "reflect NCPC's position that height for each of the proposed buildings for purposes of the Height Act should be determined from a separate measuring point." The Delegated Action also indicated that doing so would not affect the lawfulness of the height achieved.
22. Approval of the 112-foot tall buildings will allow for a ground-level clearance height of approximately 14 feet in the new south building to allow for marketable retail space. On the northern building, the greater clearance height at the ground level will allow for taller residential units and the possibility of converting those units to commercial, arts-related, or community service use if the market exists for such uses along K Street. (Exhibit 26, p. 4.)
23. The site formerly known as Waterside Mall to the east of the Property proposed a maximum building height of 130 feet. The step-down in height from the 130-foot Waterside Mall office tower to the 112-foot proposed residential height (with setbacks at 102 feet) to the 90-foot height of the Pei Towers, is typical of the stepping skyline arrangements of mid-twentieth century Modernist urban design. (Exhibit 26, p. 5.)
24. The footprint of the new buildings will enhance the scale relationship between the proposed and existing buildings. The Pei Towers will read as "buildings in the round," consistent with Pei's original design for the two towers. The two new buildings will feature a contraflective "S" curve that will create a more dynamic relationship between the new and existing buildings. The sinuous curve will also serve as a lively counterpoint to the flat, highly ordered, regular grid of the Pei facades. Like the stepping heights of the buildings, this contrast is also an element of Modernism. (Exhibit 26, p. 5.)
25. The new structures will be primarily glass and masonry piers with perforated metal panels used as balcony rails and sun screens. The alternating balcony design will reduce the scale of the new buildings and allow for two-story high clearance at many balconies. The glazing system proposed and the perforated metal panels are contemporary additions to the architectural language of this neighborhood. (Exhibit 26, p. 5.)
26. Each set of buildings will also contain an underground parking facility. The point of entry on 6<sup>th</sup> Street will be a ramp leading down to an underground "auto court" rotary to allow traffic to circulate for both self-parking and valet parking. The parking garages will hold approximately 573 parking spaces, one space for every residential unit and eight parking spaces dedicated to the retail uses. (Exhibit 26, p. 6.)



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27. The building was also designed to be friendly to bicyclists. Air-conditioned bicycle rooms and maintenance areas will be located adjacent to the auto courts in order to make the use of bicycles convenient. The project will include approximately 565 bicycle storage spaces, approximately one bike space for every residential unit. Bicycle access will be safe as the driveways into the auto court will include designated bike/pedestrian lanes. (Exhibit 26, p. 6.)
28. As a part of its transportation demand management program, the Applicant coordinated with a local car-sharing vehicle service to reserve five parking spaces for residents and visitors of this project. (Exhibit 56.)
29. The roofs of the new buildings will serve as recreational open spaces. Each new building will feature an irregularly-shaped pool at its west end, oriented toward the Washington Channel and waterfront. Pool and sun deck areas will also be provided on the roofs of the buildings. (Exhibit 26, p. 6.)
30. A key component of the Modern development pattern that characterizes Southwest Washington is the "tower in the park" rhythm of tall residential structures with generous and varied open space. The landscape architecture firm Zion Breen & Richardson, which was known as Zion Breen when it prepared the original landscape plan for the Subject Property, will renovate and update its original landscape plan. (Exhibit 26, p. 7.)
31. The PUD will include a large green space in the center of the Subject Property (the "Great Lawn") and two new "vest pocket" parks located between the Pei Towers and the new residential buildings. The PUD will also include a new linear garden flanking 6<sup>th</sup> Street between the Pei Towers that will be open to the public during the day. Two small pavilions that will define the ends of this space will allow for vending of light refreshments. (Exhibit 26, p. 7.)
32. An eight-foot-wide east-west path parallel to the Great Lawn will allow pedestrians and bicyclists to traverse the site to access Metro and the future developments to the east. (Exhibit 26, p. 8.)
33. The Applicant will create a shared north/south service drive on the east side of the Subject Property with the adjacent property owner. This shared drive will be paved and will be safely accessible by pedestrians as well as bicyclists in the defined pedestrian crossings areas. Access to the north and south ends of the shared private drive will be provided on the site formerly known as Waterside Mall. The shared route will bend westward behind the central garden and amenity building on the Subject Property. The minimum width of two 11-foot-wide drive aisles will be maintained throughout the length of the shared drive. Sidewalks will be provided along both sides of the "pedestrian crossing zone." (Exhibit 32, p. 2.)

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34. On the east end of the Great Lawn, the Applicant will provide an amenities building that will include fitness facilities, recreation space, and a large swimming pool with lap lanes. This building will be available to all residents of the Property. (Exhibit 26, p. 8.)
35. The PUD will provide several public benefits and project amenities, including the following:
- a. Housing and Affordable Housing: The PUD will create approximately 540 to 570 new and upgraded residential units and at least 11,500 square feet of workforce affordable housing. (Exhibit 26, p. 22.)
  - b. Preservation of Private or Public Structures, Places, or Parks: The Applicant will preserve the I.M. Pei buildings on the Subject Property and integrate those structures into an aesthetically-pleasing residential development designed for the needs of a 21<sup>st</sup> century urban community. (Exhibit 26, p. 23.)
  - c. Urban Design, Architecture, Landscaping, or Creation or Preservation of Open Spaces: The massing of the new buildings along M, K, and 6<sup>th</sup> Streets will create an appropriate urban development pattern that will visually define the adjacent streets and public spaces while preserving significant open space within the center of the Subject Property. The southern building will be oriented along a significant east-west corridor and will create an attractive streetscape for pedestrians exiting the Metrorail station headed for the Arena Stage or the Southwest waterfront. Eliminating the existing surface parking and replacing it with multiple ground-level retail and residential entrances will reduce the sidewalk and street to a human scale and will help remake the public space into an active pedestrian thoroughfare. (Exhibit 26, p. 23.)
  - d. Site Planning and Efficient and Economical Land Uses: The proposed project will take advantage of its site location along a significant link between a mass transit hub and cultural and recreational destinations by placing retail at the ground-floor street level. The project will create an ensemble of well-defined outdoor spaces for various purposes:
    - i. M Street, S.W.: The M Street right-of-way will be defined by a building of appropriate size and scale, accomplishing the important urban design goals of defining the public realm as envisioned in the L'Enfant plan and marking the western terminus of M Street at the nexus of Maine Avenue and the Waterfront. The 18-foot, 8-inch setback of the building will establish the M Street corridor, consistent with the L'Enfant plan.
    - ii. K Street, S.W.: The project will define the K Street edge of the public park to the north with a building of appropriate scale to that important urban space.

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- iii. 6<sup>th</sup> Street, S.W.: The project design will create a garden open to the public along 6th Street between the Pei Towers. Pavilions flanking the space will house facilities for serving light refreshments. These facilities will also mark the entry point to the interior of the site.
  - iv. Great Lawn: At the project's core, a central green will be restored on the Property that will be gated but visually open to view as the public traverses the site.
  - v. Vest-Pocket Parks: These spaces will serve as a communal space for passive recreation primarily for the residents of each pair of buildings and the public. The central focus of these spaces will be a glass pyramid located directly above and providing natural light to the auto court below. Wall fountains at the east end of these spaces and groves of trees will create two urbane spaces with dappled light and the sound of water.
- e. Effective and Safe Vehicular and Pedestrian Access: The PUD will provide two points of entry and exit into two shared parking garages for the north and south ends of the Subject Property. These garage access ramps will be located along 6<sup>th</sup> Street, S.W. and will allow for traffic circulation via an underground "auto court" rotary. The shared service drive transversing the back of the development will be accessible from K Street and M Street. The project will provide separate pedestrian entrances and exits for both residents and shoppers along M and K Streets. These separate entrances/exits will mitigate any potential pedestrian and vehicular conflicts. The Subject Property, two blocks from the Waterfront-SEU Metrorail Station, will be integrally connected to the District's mass transit system. (Exhibit 26, p. 26.) The Applicant agreed to implement a transportation demand management program consisting of:
- i. Coordinating with a local car-sharing service to reserve five parking spaces for residents and visitors of the project;
  - ii. Providing a one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service;
  - iii. Providing all new residents, upon move-in, a complimentary SmarTrip card with \$20 Metro fare to encourage the use of mass transit;
  - iv. Providing an on-site business center to provide residents access to a copier, facsimile machine, and internet services;
  - v. Designating a member of building management as a point of contact responsible for coordinating and implementing transportation demand management incentives; and

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- vi. Providing a secure bicycle storage space for each residential unit. (Exhibit 56.)
- f. Uses of Special Value: The Applicant has agreed to provide the following community benefits as a result of this project:
  - i. Tenant Condominium Discounts: The Applicant created a homeownership opportunity by offering existing tenants the chance to purchase a condominium at a discount of approximately \$100 per square foot. The total value of this program exceeds \$3,240,000.
  - ii. Tenant Rental Discount: The Applicant created a program that will provide existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate will remain the same, provided the tenant chooses to stay in a similarly sized unit. The total value of this program is expected to exceed \$384,000 annually.
  - iii. If fewer than 80 residents take part in either the condominium purchase program or the rental program by December 31, 2007, the Applicant will increase the amount of work-force affordable housing provided in the PUD to 16,000 square feet. The workforce affordable housing will be reserved for those households making up to 80 percent of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area. These units will be restricted through a deed restriction, covenant, and/or other legal means in their resale for a period of 20 years.
  - iv. Jefferson Junior High School: The Applicant will make a financial contribution of \$17,000 to Jefferson Junior High School. These funds will be used for enhancement of the school's computer and technological development capabilities.
  - v. Amidon Elementary School: The Applicant will make a financial contribution of \$17,000 to Amidon Elementary School. These funds will be used to renovate the school's library.
  - vi. Bowen Elementary School: The Applicant will make a financial contribution of \$17,000 to Bowen Elementary School. These funds will be put toward technological advancements, including computers and Smart Boards.
  - vii. Friends of the Southwest Library: The Applicant will make a financial contribution of \$15,000 to the Friends of the Southwest Library. These funds will be used to expand the Library's resource collection.

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- viii. Study of the Potential Renovation of the Town Center West Park: This park is located immediately north of the Property and its ownership was recently transferred from the U.S. Government to the District of Columbia. The Applicant will engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity. The cost of this study is \$15,000.
- ix. Proposed Retail Operators: In response to resident and community requests for neighborhood-serving retail, the Applicant will seek a mix of retail uses that may include a full-service restaurant with alcohol service, dry cleaners, bakery, or coffee shop.
- x. Green Space: The Applicant brought the original landscape architecture firm, now known as Zion Breen & Richardson, back to renovate and update its original landscape plan to accommodate the new project. Zion Breen & Richardson will design a new linear garden flanking 6<sup>th</sup> Street between the Pei Towers that will be open to the public during the day. (Exhibit 54.)
- xi. Revenue for the District: The addition of 540-570 new and upgraded housing units and accompanying retail uses in the new buildings will generate significant additional tax revenues in the form of recordation, transfer, property, income, sales, use, and employment taxes for the District. (Exhibit 26, p. 27.)
- xii. First Source Employment Program: The Applicant will enter into an agreement to participate in the Department of Employment Services ("DOES") First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 26, p. 27.)
- xiii. Local Business Opportunity Program: The Applicant will enter into a Memorandum of Understanding ("MOU") with the Office of Local Business Development ("OLBD") to use the resources of the OLBD to utilize local business enterprises in the development of this project. (Exhibit 26, p. 28.)
- xiv. Comprehensive Plan: As described in greater detail below, the PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Exhibit 26, p. 28.)
- xv. Public Benefits of the Project: Attributes of the PUD project will include superior architecture (no thru-wall vents, complete architectural treatment of all sides of the buildings, extensive soft and hardscape elements of the landscape plan), affordable housing, transit-oriented development, ground-floor retail establishments, preservation of existing building, significant open space and public space; extensive "green" design features, including green roofs on the Pei

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Towers and intensive plantings on the new buildings. The Applicant will employ a roof assembly with pavers on pedestals to collect rain water on the new buildings. The rain water will drain into cisterns at the garage level and then be pumped back to the roofs to water the intensive, somewhat less-drought resistant plants that will provide necessary shade. (Exhibit 26, p. 28; Exhibit 32, Exhibit D.)

36. The proposed project is consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the following major themes of the Comprehensive Plan. (Exhibit 26, pp. 30-32; Exhibit 38, pp. 3-4.)
- a. Stabilizing the District's neighborhoods: The creation of 540 to 570 new and upgraded residential units will help stabilize and enhance the existing Southwest neighborhood. The retail component will strengthen the neighborhood by providing shopping and dining opportunities in an area that suffers from a general lack of retail activity.
  - b. Respecting and improving the physical character of the District: The development will preserve the existing structures and open space, while replacing unattractive surface parking lots with retail, restaurant, and residential opportunities that befit the urban character of the immediate neighborhood.
  - c. Preserving existing buildings: This PUD will preserve the Marina View Towers designed by I.M. Pei and landscaping designed by Zion Breen, which reflect the development patterns of mid-20<sup>th</sup> century Washington, and integrate them into a more modern and appropriate 21<sup>st</sup> century urban development.
  - d. Preserving and promoting cultural and natural amenities: The improved streetscape along M Street will boost Metro and pedestrian access to the Arena Stage across from the Subject Property and to the Southwest waterfront.
  - e. Preserving and ensuring community input: The Applicant met with the Marina View Towers Tenant Association on two occasions, the Southwest Neighborhood Assembly, Tiber Island Condominium Board, Tiber Island Cooperative Board, and ANC 6D on four occasions. The Applicant also held "office hours" for residents of the Marina View Towers on more than 30 occasions.
37. The PUD is consistent with many Major Elements of the Comprehensive Plan, including the Housing Element, the Urban Design Element, the Land Use Element, the Generalized Land Use Map, and portions of the Ward 6 Element. (Exhibit 26, pp. 32-37; Exhibit 38, pp. 4-5.) The proposed PUD is also compatible with other plans of the District of Columbia, including the Southwest Waterfront Development Plan of the Anacostia Waterfront Initiative.

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38. The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pei Towers. The project will provide at least 11,500 square feet of workforce affordable housing.
- a. The PUD will further the goals of the Housing Element through the creation of approximately 285 to 315 new residential units and by enhancing the existing 255 residential units in the two Pei Towers. The project will provide at least 11,500 square feet of workforce affordable housing.
  - b. The PUD will further the goal of the Urban Design Element through the construction of two prominent residential buildings with approximately 8,900 square feet of ground floor retail and residential amenities that will complement the existing buildings and established residential neighborhood, which surrounds the Subject Property. The ground-floor retail stores and the building will activate the streetscape along M Street between the Waterfront-SEU Metro Station at 4th and M Streets and Arena Stage and the waterfront to the west.
  - c. The PUD will further the goal of the Transportation Element by providing a mixed-use development with ground floors retail two blocks from the Waterfront-SEU Metrorail Station. The location near the Metro ensures that mass transit will be a desirable and preferred option for its residents. Moreover, the availability of ground-floor retail in the new south building along M Street, close to the Metro station, will establish the project as a center for the neighborhood.
  - d. The PUD will further the goals of the Land Use Element by preserving existing residential structures in the neighborhood and adding new residents and accompanying retail and residential opportunities that will benefit the entire neighborhood.
  - e. The PUD will further the goals of the Preservation and Historic Features Element by preserving the significant buildings and replacing surface parking lots with two new residential buildings that will integrate the old and new structures, stabilize the site, and ensure the preservation of this facet of District history.

#### GOVERNMENT REPORTS

39. The Historic Preservation Office ("HPO") filed a report dated October 5, 2006. The report described the PUD as a compatible design in its context and a model for how to integrate substantial new construction within the Southwest environment. (Exhibit 26, Exhibit B.)

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40. The Applicant submitted the project to the Historic Preservation Review Board ("HPRB") for concept design review of a potential historic property. While no Southwest Historic District formally exists, HPRB evaluated the project as if the historic district existed and the Pei buildings were contributing buildings to the historic district. (Exhibit 26, pp. 10-11.) The HPRB reviewed the project at its public hearing on October 5, 2006 and adopted a "consensus endorsement of the project." (Exhibit 26, p. 11.)
41. In its February 5, 2007 report, the Office of Planning ("OP") recommended approval of the project. OP found that the project would complement redevelopment plans for both the Arena Stage and Waterside Mall sites, and was supportive of "green building" and smart growth principles. OP also stated that the PUD was consistent with the 2006 Comprehensive Plan Future Land Use Map, which designated the site as "high density residential" where "high-rise (8 stories or more) apartment buildings are the predominant uses..." (Exhibit 38, pp. 3-12.)
42. OP's support for the project was subject to: (1) the provision of additional detail and certainty regarding amenity items, particularly those related to housing discounts for existing tenants, green building elements, and contributions to neighborhood schools and parks; (2) registration of easements to ensure that the mid-block connections through the site would remain open and accessible to the public; and (3) concurrence from the District Department of Transportation ("DDOT") regarding the proposed parking, loading and rear alley provisions. (Exhibit 38, p. 12.)
43. DDOT submitted a report dated February 8, 2007, stating that it would not support the PUD application unless the Applicant amended its transportation study to modify the traffic generation assumptions and expanded the transportation demand management benefits to prospective residents. (Exhibit 40, p. 1.)
44. DDOT submitted a supplemental report on February 14, 2007, indicating that the Applicant had provided additional information in response to DDOT's concerns: the Applicant agreed to implement all transportation demand management measures recommended in DDOT's initial report and the Applicant agreed to expand its scope of study. DDOT requested flexibility in filing additional comments once the Applicant filed its supplemental traffic analysis. (Exhibit 43, p. 1.)
45. On February 26, 2007, DDOT submitted a final report indicating that the Applicant complied with the conditions outlined in DDOT's initial report and that it did not object to the planned development. (Exhibit 68, p. 1.)

ANC REPORT



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46. ANC 6D voted 6-0 at its regularly scheduled meeting held on February 12, 2007 to recommend approval of the PUD subject to the following conditions: (1) the setbacks of the newly constructed building on M Street, S.W. should be consistent with and equivalent to the setbacks for the adjacent Waterside Mall development, but in no event less than 22 feet from the curb line; (2) the Applicant should demonstrate that it is duly licensed to do business in the District of Columbia by the Department of Consumer and Regulatory Affairs ("DCRA"); (3) the Applicant should pay in full any fines levied by DCRA; and (4) the Applicant should prepare a formal condominium conversion and renovation plan for distribution to the Marina View Towers residents not less than 30 days after the approval of this PUD so residents may vote on the plan in accordance with District law. (Exhibit 60.)

#### PERSONS IN SUPPORT

42. The Commission received letters or heard testimony from a number of persons in support of the application. The statements in support of the proposed PUD generally cited the Applicant's consideration of concerns and issues raised by tenants of the Marina View Towers; benefits to the neighborhood from the redevelopment plans for the Waterfront area, specifically the Marina View Towers Complex; the architectural and landscape design of the PUD; and the provision of desired amenities for tenants as well as the greater community.

#### PERSONS IN OPPOSITION

43. The Commission received letters or heard testimony from a number of persons in opposition to the application. The statements in opposition to the proposed PUD generally cited the height, bulk, and design of the proposed towers, concerns about the Applicant's proffer of affordable housing, the proposed setback on M Street, and the impact on the amount of open space available in the neighborhood,

#### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. (11 DCMR §2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.) The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. In this

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application, the Commission finds that the requested flexibility to permit multiple buildings on a single record lot can be granted without detriment to the zone plan or map.

3. The development of this PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than that achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The PUD is a project of exemplary architectural quality, character, and design, considering the attention paid to architectural design details, the appropriate renovation of the Pei Towers, the landscaping treatment throughout the site, and the commitment to "green" design. The Commission finds that the proposed massing and building height will relate well to the Pei Towers and neighboring properties, including the Tiber Island complex. The project respects the existing character of the Southwest D.C. community while merging the neighborhood with the urban design proposed for the nearby Southwest waterfront.
6. The Commission agrees with the testimony of the project architect and the representatives of the Applicant in finding that this project provides superior features that will benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds that the condominium purchase discount and the rental discount programs offered to existing tenants are significant amenities of the project. The Commission also finds that the financial contributions to the local D.C. public schools, the Southwest Library, and for the study of the renovation of the adjacent Town Center West Park are appropriate and will provide significant benefits to the surrounding community.
7. Approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The PUD will create new residential units, including workforce affordable housing, retain existing residents, and provide retail opportunities in place of existing surface parking lots.
8. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create any adverse traffic or parking impacts on the surrounding community. The Commission finds that the Applicant's transportation demand management program will help mitigate any adverse impacts related to increased vehicular traffic or parking demand in the surrounding area that may arise as a result of this project.

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9. The Commission finds that the development and construction management plan submitted by the Applicant will effectively mitigate any adverse impacts that construction activity on the Property will have on the surrounding community.
10. In accordance with D.C. Official Code §1-309.10(d)(2001), the Commission must give “great weight” to the issues and concerns of the affected ANC. ANC 6D voted to support the project subject to several conditions. The Commission carefully reviewed the conditions proposed by the ANC and has determined that conditions related to the Applicant’s license to do business in the District of Columbia and the conversion of the rental building to a condominium are outside the scope of the Commission’s purview.
11. The Commission considered the written submissions and testimony of the representatives of ANC 6D and Tiber Island that the Applicant be required to further set back the new building from the property line along M Street. The Commission finds that in light of the testimony of OP, the support of this project from the HPO and the HPRB, and the written submission and testimony of the Applicant at the public hearing, such a setback is not appropriate or necessary. The Commission finds that such a setback would impair the urban fabric of the project and the area by pulling the building further away from the property line. The Commission agrees with the Applicant’s post-hearing submission that fundamental design principles argue against setting the building further back from its property line along M Street. The proposed siting and height of the building along M Street are consistent with the 1910 Height Act and will create an appropriate spatial relationship at the western terminus of M Street. The Commission also finds that an appropriate visual corridor along M Street will be created with the approval of this application.
12. The Commission finds that no adverse impact to the amount of light, air, or open space available to neighboring properties (including the Tiber Island properties) will occur as a result of the proposed siting and height of the new south building along M Street. The Commission notes that the M Street right of way is 120 feet wide at this point and that the additional setback requested by the ANC and Tiber Island would have no discernible impact on the surrounding properties, yet would create a suboptimal width of the proposed vest pocket park or width of the residential units in the new south building. For these reasons, the Commission approves the height and location of the new south building along M Street.
13. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
14. Notice of the public hearing was provided in accordance with the Zoning Regulations.

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15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a planned unit development and related zoning map amendment application from the R-5-D Zone District to the C-3-C Zone District for Lot 50 and 853 in Square 499. The approval of this PUD and related zoning map amendment is subject to the following guidelines, conditions, and standards:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 20, 21, 26, 32, 53, 54, 55, 56, and 69 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall make the following financial contributions, prior to the issuance of a building permit for the new south building on the Subject Property:
  - a. Jefferson Junior High School: The Applicant shall make a financial contribution of \$17,000 to Jefferson Junior High School to be used for enhancement of the school's computer and technological development capabilities.
  - b. Amidon Elementary School: The Applicant shall make a financial contribution of \$17,000 to Amidon Elementary School to be used to renovate the school's library.
  - c. Bowen Elementary School: The Applicant shall make a financial contribution of \$17,000 to Bowen Elementary School to be put toward technological advancements, including computers and Smart Boards.
  - d. Friends of the Southwest Library: The Applicant shall make a financial contribution of \$15,000 to the Friends of the Southwest Library to be used to expand their resource collection.
  - e. Study of the Potential Renovation of the Town Center West Park: The Applicant shall engage the original designers of this park (Wallace Roberts Todd) to assess the current condition of the park and recommend steps to utilize the park as a true community amenity at a cost of \$15,000.
3. No later than six months after making the contributions described in subparts (a) through (d) of Condition 2, the Applicant shall provide evidence to the Office of Zoning's Compliance Review Manager demonstrating that named organizations have applied the funds to the designated use. If the money has not been applied to the designated uses within six months, the Applicant shall provide a reasonable explanation to the Office of

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Zoning's Compliance Review Manager as to why not and shall present evidence to the Office of Zoning's Compliance Review Manager within one year thereafter indicating that the contribution has been properly allocated.

4. Prior to the sale of the first condominium unit, the Applicant shall establish a condominium discount purchase program whereby existing Marina View Towers tenants may purchase a condominium at a discount of no less than \$100 per square foot.
5. Prior to the sale of the first condominium unit, the Applicant shall establish a program providing existing Marina View Towers tenants the opportunity to rent a newly renovated apartment in the project at no additional cost. The monthly rental rate for the tenant will increase only in connection with the annual Consumer Price Index increases, provided the tenant chooses to stay in a similarly sized unit.
6. Prior to the sale of the first condominium unit, the Applicant shall establish a transportation demand management program includes the following:
  - a. Coordination with a local car-sharing service to reserve five parking spaces for residents and visitors of this project;
  - b. A one-time membership fee subsidy of \$35 per residential unit for residents to join a local car-sharing service;
  - c. A complimentary SmarTrip card with \$20 Metro fare for all new residents upon move-in, to encourage the use of mass transit;
  - d. An on-site business center to provide residents access to a copier, facsimile machine, and internet services;
  - e. A secure bicycle storage space for each residential unit; and
  - f. A member of building management designated as a point of contact who is responsible for coordinating and implementing transportation demand management incentives.
7. The Applicant shall preserve the Pei Towers and shall renovate their exteriors, including the replacement of exterior glass walls and windows with insulated glass panels and windows in the same geometric configuration, repairing exposed concrete, and expanding the lobbies in each structure.
8. The Applicant shall use the landscape firm known as Zion Breen & Richardson to renovate and update its original landscape plan to accommodate the new project, to design two new "vest pocket" parks located between the existing Pei Towers and the

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Applicant's proposed residential buildings, and a new linear public garden flanking 6<sup>th</sup> Street between the Pei Towers.

9. The Applicant shall coordinate its design for a shared driveway in the rear of the property with the adjacent property owners. The Applicant and the adjacent property owner shall create reciprocal easement agreements that will ensure that the mid-block pedestrian connections between the properties will remain open and accessible to the general public. The Applicant shall provide the Commission with evidence of a recorded easement prior to the issuance of a certificate of occupancy for any units in the new south building.
10. The Applicant shall provide public access through the site in designated areas to accommodate pedestrian/bicycle traffic between 6<sup>th</sup> Street and the Waterfront/SEU Metrorail Station.
11. The Applicant shall abide by the development and construction management plan submitted on January 26, 2007 (Exhibit 32). This development and construction management plan includes a pest control program to ensure that no increase in pest activity occurs during the period of construction activity on the Property.
12. The Applicant shall reserve 11,541 square feet of gross floor in the PUD as affordable units to households having an income not exceeding 80 percent of Area Median Income for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size), and consistent with the eligibility requirements and enforcement mechanisms enumerated in Exhibit G of Exhibit 26. Should fewer than 80 residents participate in the condominium discount purchase program or the rental program described in Conditions 4 and 5 by December 31, 2007, the Applicant shall increase its commitment to affordable housing to a total of 16,000 square feet. To the extent that minor modifications are needed in the execution of this program to conform to District or Federal housing programs, the Applicant shall work with the Department of Housing and Community Development ("DHCD") to make such changes comply with the same.
13. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction or renovation of one of the residential buildings as specified in 11 DCMR §§ 2404.8 and 2409.1; the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within seven (7) years of the issuance of the final certificate of occupancy for the first building.
14. The Applicant shall enter into a memorandum of understanding ("MOU") with the Office of Local Business Development ("OLBD") in substantial conformance with the memorandum of understanding submitted as Exhibit I of Exhibit 26 of the record. A

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fully signed MOU between the Applicant and OLBD must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building.

15. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in substantial conformance with the First Source Agreement submitted as Exhibit I of Exhibit 26 of the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Office of Zoning prior to the issuance of a building permit for the new south building.
16. The Applicant shall achieve a minimum of 20 points as defined by the U.S. Green Building Council in the LEED certification process and further described in Exhibit D of Exhibit 32 of the record.
17. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
  - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
  - To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.
18. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
19. The change of zoning from the R-5-D Zone District to the C-3-C Zone District for the Property shall be effective upon the recordation of the covenant discussed in Condition No. 18, pursuant to 11 DCMR § 3028.9.
20. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as

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amended, D.C. Official Code § 2-1401.01 et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On April 9, 2007 the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Carol J. Mitten, Michael G. Turnbull, Anthony J. Hood, and John G. Parsons to approve; Gregory N. Jeffries, having not participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on May 14, 2007 by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Michael G. Turnbull, and Anthony J. Hood to adopt ; Gregory N. Jeffries, having not participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on ~~OCT 26 2007~~.



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****Z.C. ORDER NO. 06-31****Z.C. Case No. 06-31****(Consolidated Planned Unit Development and Related****Zoning Map Amendment for The John Akridge Development Company at 5220 Wisconsin Avenue, N.W.)****July 30, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 8, 2007 and April 12, 2007 to consider an application from The John Akridge Development Company (the "Applicant") for consolidated review and approval of a planned unit development and related zoning map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT****Application, Parties, and Hearings**

1. On June 19, 2006, the Applicant filed the application for consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment of the property located at 5220 Wisconsin Avenue, N.W. (the "Site"), to rezone the Site to C-2-B (the "PUD Submission"). The PUD Submission is in the record at Exhibits 5 (PUD Submission Statement) and 6 (PUD Submission Plans).
2. At its September 11, 2006 public meeting, the Commission set the case for hearing.
3. The Applicant filed materials in its Prehearing Submission on November 13, 2006 (the "Prehearing Submission"), in the record at Exhibits 23 (Prehearing Submission Statement) and 24 (Prehearing Submission Plans). The Applicant then filed additional materials in its Modified Prehearing Submission on February 15, 2007, along with fully-re-issued plans and elevations (the "Modified Prehearing Submission"), in the record at Exhibit 42.

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4. After proper notice, the Commission held a public hearing on the application on March 8, 2007.
5. The Commission determined the parties to the case at the March 8, 2007 public hearing. Parties in this case included the following: the Applicant; Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the Site is located; Ward 3 Vision in support of the application; and Friendship Neighborhood Association ("FNA") in opposition to the application. ANC 3E and FNA are collectively referred to as the "Opposition."
6. The Applicant presented the following witnesses: Matt Klein and David Tuchmann representing the Applicant; Eric Colbert, architect with the firm of Eric Colbert and Associates; Osborne George and Iain Banks, traffic consultants with O.R. George & Associates; and Steven Sher, land planner with Holland & Knight. The Applicant also presented two additional witnesses in response to questions: Larry Demaree, a retail and retail leasing consultant with Demaree & Associates, Inc., and Eric Smart, an economic benefits consultant with Bolan Smart Associates, Inc. Messrs. Colbert, George, Banks, Sher, Demaree, and Smart were accepted as experts in their respective fields.
7. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") each testified in support of the project.
8. The Commission held a continuation of the hearing for this case on April 12, 2007. At the continuation hearing, ANC 3E, Ward 3 Vision, and FNA presented their witnesses and testimony.
9. ANC 3E was represented by Commissioners Lucy Elridge and Carolyn Sherman. Their testimony reflected those issues set forth in the ANC 3E report and resolution, discussed in Findings 141 through 143.
10. Ward 3 Vision presented one witness, Tom Quinn, a member of the organization's Steering Committee, in support of the project. Ward 3 Vision is an organization of Ward 3 neighbors who advocate for "positive growth and forward-thinking development" and environmentally responsible building design in Ward 3. Ward 3 Vision testified that the project would benefit the community and is the type of transit-oriented development that the neighborhood needs. Ward 3 Vision was especially supportive of the retail aspect of the project, including the retail conditions proffered by the Applicant and set forth in Condition 11.
11. FNA presented the following six witnesses: David Frankel, a resident living near the project who testified regarding the context of the area surrounding the project and regarding a petition signed by residents who oppose development of the project other than within height and density limitations of R-5-B matter-of-right standards; George

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Oberlander, an urban planning and zoning consultant, who testified as to the 1974 rezoning plan for the area, the project's inconsistency with the Comprehensive Plan, and the Applicant's development flexibility and incentives requested; Marilyn Simon, an area resident, who testified further to the context for height and density; Joe Mehra, a traffic and transportation consultant, who testified as to the traffic issues related to the project; Alta Mainer, a nearby resident who testified regarding traffic in the neighborhood; and William Vigdor, a nearby resident, who testified to adverse impacts of the project on the immediate area, including traffic, school overcrowding, and emergency response vehicles, as well as use of the alley for loading. Messrs. Oberlander and Mehra were accepted as experts in their respective fields.

12. Many persons and organizations testified in support of the project, and dozens of letters, including letters from both the former Ward 3 Councilmember Kathy Patterson and the current Ward 3 Councilmember Mary Cheh, were submitted to the record in support of the project. The project was endorsed by the D.C. Chapter of the Sierra Club and received recognition as an outstanding project by the Smart Growth Alliance.
13. Many persons and organizations testified in opposition to the project, and dozens of letters were submitted to the record in opposition to the project. The letters and testimony raised a number of issues, with the primary concerns being size and scale of the project and traffic generated by the project. In addition, the Opposition submitted a petition with approximately 500 names opposing any development not within the height and density maximums permitted in the R-5-B zone.
14. At its public meeting held on June 11, 2007, the Zoning Commission voted to re-open the record to receive an additional submission by ANC 3E, then took proposed action by a vote of 5-0-0 to approve with conditions the application, including PUD plans, as presented at the public hearings or as part of the written record.
15. The proposed action of the Commission was officially referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated July 12, 2007, found the proposed PUD and related map amendment would not affect the federal interests in the National Capital, or be inconsistent with the Comprehensive Plan for the National Capitol.
16. The Commission took final action by a vote of 5-0-0 to approve the applications at its public meeting held on July 30, 2007.

#### **PUD Site and the Surrounding Area**

17. The Site consists of Lots 810, 811, and 812 in Square 1657 and contains 22,500 square feet of land. The Site is currently improved with a used car dealership and repair bay as

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well as a florist and abuts the Washington Metropolitan Area Transit Agency's ("WMATA") Western Bus Garage to the north and a Pepco substation to the south.

18. The Site is situated in Ward 3, mid-block on the west side of Wisconsin Avenue between Jenifer and Harrison Streets, N.W. The Site is located in the Friendship Heights neighborhood and is within 300 feet of the southern entrance to the Friendship Heights Metrorail Station. The general character of the area reflects the height, density, and use expected at a Metrorail station on a major commercial corridor, which includes the Mazza Gallerie Shopping Center, Chevy Chase Pavilion, Friendship Center, and Chevy Chase Plaza.
19. The PUD Site is not a designated historic landmark nor is it within a historic district.

#### **Existing and Proposed Zoning**

20. The Site was zoned R-5-B in 1974 when the zoning of the Friendship Heights area was being evaluated in light of concerns about traffic congestion. Zoning changes were first adopted on an emergency basis by Order No. 75 (October 18, 1973). Permanent amendments were adopted in Zoning Commission Case No. 73-29, Order No. 87 (February 12, 1974). The Site has not been rezoned since 1974. The Applicant requests that the Site be rezoned to C-2-B in conjunction with the PUD.
21. Wisconsin Avenue to the north of the project is the central core of Friendship Heights, with zoning categories of C-3-C, C-3-A, and C-2-B and many projects having been developed as PUDs.
22. The Wisconsin Avenue corridor to the south of the project is zoned C-2-A and is generally developed with neighborhood-serving commercial uses. Residential developments, zoned R-2, are found east and west of the Wisconsin Avenue commercial corridor.
23. The R-5 Districts are designed to permit flexibility of design by permitting in a single district all types of urban residential development that conform to the height, density, and area requirements established for each district. The R-5-B District permits moderate height and density, including a maximum height of 50 feet, with no limit on the number of stories, and a maximum density of 1.8 FAR. An apartment house in the R-5-B District is permitted as a matter-of-right. Retail is not permitted as a matter-of-right in the R-5-B District, although an accessory convenience store is permitted as a special exception. Parking for residential uses is required at a rate of one space for each two dwelling units. A PUD in the R-5-B District may have a maximum height of 60 feet, with no limit on the number of stories, and a maximum density of 3.0 FAR.

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24. The C-2-B District is designated to serve commercial and residential functions. The C-2-B District permits a maximum height of 65 feet and a maximum density of 3.5 FAR, of which up to 1.5 FAR may be devoted to non-residential uses. For residential uses, parking is required at a minimum of one space per three dwelling units, and for retail uses, one parking space is required for each 750 square feet of gross floor area in excess of 3,000 square feet. A PUD in the C-2-B District may have a maximum height of 90 feet and a maximum density of 6.0 FAR, of which up to 2.0 FAR may be devoted to non-residential uses.

### **Rezoning to C-2-B**

25. The Opposition argued that rezoning from R-5-B to C-2-B is incompatible with the Comprehensive Plan of 2006 and the Future Land Use Map and is inappropriate for the Site. ANC 3E recommended that, if rezoning was necessary, that the project be rezoned to C-2-A.
26. FNA, through its expert witness George Oberlander, argued that the R-5-B zoning from the 1974 rezoning and the attendant planning goals are still relevant. Mr. Oberlander concluded that rezoning the Site to C-2-B would violate the intent of these planning objectives. The goal of maintaining a buffer zone between the higher density regional center and lower density residential area, as proposed in the 1974 Friendship Heights Sector Development plan, was referenced often by the Opposition.
27. The Applicant argued, however, that the 1974 zoning is based on a more-than-30-year-old analysis that is outdated and has been overtaken by changes in the area. Furthermore, the District has gone through two Comprehensive Planning cycles (1998 and 2006), in which different planning goals and objectives were put in place. Steven Sher, the Applicant's expert in land planning, testified that the Future Land Use Map in the Comprehensive Plan of 2006 designates the Site for mixed-use medium-density residential, low-density commercial, and local public facilities. Furthermore, the Generalized Policy Map of the Comprehensive Plan of 2006 designates the Site in the Main Street Mixed-Use Corridor, for which the common feature is that developments have a pedestrian-oriented environment with traditional storefronts and upper-story residential or office.
28. Mr. Sher concluded that R-5-B is not consistent with the Plan. Mr. Sher further testified that the new Comprehensive Plan does not call for the Site to be a buffer.
29. Mr. Sher further testified that notwithstanding the inapplicability of the 1974 plan, the project is located and designed in a way that provides for a transition from the height and density of the project to the nearby lower scale neighborhoods. The height of the building at the southwest corner is only three stories above grade at Wisconsin Avenue and approximately 45 feet above the alley. This lower height portion of the building and

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the open courtyard behind it represent about one-third of the Site. The seven-story portion of the building is removed from the southwest corner of the property more than 50 feet along the south property line and more than 95 feet along the west property line. Furthermore, the project abuts a 20-foot alley in the rear.

30. The Applicant's expert witness further testified that the juxtaposition of height and density permitted along the city's radial corridors adjoining lower density residential developed is a typical condition found throughout the District. This proposed development, with its steps in height, creates more of a transition and has less of an impact than is the case in many matter-of-right locations, where the zoning pattern was presumably determined to be consistent with the overall purposes and intent of the Zoning Regulations.
31. OP, in its report dated February 26, 2007, (Exhibit 112) (the "OP Report") stated that the Comprehensive Plan of 2006 serves as the primary guidance for land use planning and that the 1974 Friendship Heights Sector Development Plan is not relevant.
32. ANC 3E agreed with the Applicant's position that R-5-B was not the appropriate zone for the Site; however, ANC 3E argued that C-2-A was the appropriate zone, because C-2-B is not a medium-density residential zone.
33. The Commission agrees with Mr.. Sher that the rezoning of the Site to C-2-B in the context of the PUD is not inconsistent with the Comprehensive Plan. Based on the existing zoning in the immediate area and the designations within the Comprehensive Plan, C-2-A is the zoning that is given to mixed-use moderate-density residential, not medium-density.
34. ANC 3E further argued that the rezoning would set an unwanted precedent for overdevelopment of other nearby sites that may soon be redeveloped. However, the Commission has twice held that "a map amendment granted as part of a PUD establishes no precedent." (5401 Western Avenue, N.W, Zoning Commission Order No. 02-17, 50 DCR 7062, 7069 (2003), *quoting*, Tenley Park LLC, Zoning Commission Order No. 921, 48 DCR 10524-10525 (2001).)
35. The Zoning Commission finds that the C-2-B zone designation related to this PUD is the appropriate zone district based on the Land Use designation and categories set forth in the 2006 Comprehensive Plan.
36. The Zoning Commission finds that the project provides an appropriate massing and height and will include a transition on the Site from the Wisconsin Avenue frontage to the rear. Thus, the rezoning will not adversely impact the nearby lower scale neighborhood.

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37. The Zoning Commission finds that rezoning the Site is consistent with the purposes and objectives of zoning as set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01) as follows:
- a. The proposed zone is not inconsistent with the Comprehensive Plan, as stated in Findings No. 105 through 128;
  - b. The proposed zone will not produce objectionable traffic conditions, as stated in Findings No. 52 through 61;
  - c. The requested rezoning will promote the health and general welfare by stabilizing land values, including the provision of home ownership in keeping the character of the surrounding area, and facilitating Metro ridership, as testified to by the Applicant's traffic expert and DDOT; and
  - d. The proposed rezoning will not lead to the overcrowding of land, as stated in Finding No. 82.
38. The Zoning Commission finds that in approving this project, it is not approving rezoning of any other project. The Commission will look at the individual project and the impacts related to the same for each project and will make its decision accordingly.
39. The Zoning Commission finds that the location of the Site, the character of the surrounding area, and the District's planning goals and objectives, including the policies supporting transit-oriented development, support the request for C-2-B zoning on the Site in the context of this PUD.

### **PUD Project**

40. The Applicant proposes the construction of an apartment house that will contain 60 to 70 residential units and approximately 13,200 square feet of ground floor retail. The overall density for the project will be 5.25 FAR.
41. The maximum height of the project will be 79 feet. The massing of the project has been arranged such that the east façade facing Wisconsin Avenue is five stories, while the seven-story portion of the project is predominantly set back from the street. The project steps down to three stories at the rear of the project, closest to the lower scale residential community. The frontage of the project is a more traditional-style brick with punched windows with the remainder of the brick being more glass and modern design.
42. The project will include parking in a below-grade garage, accessed from the 20-foot alley at the rear of the building. Parking will be provided as follows: 1.2 spaces per residential unit based upon the final unit count, 15 retail space, 3 residential visitor spaces, and 2

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car-sharing spaces. Based on the unit range of 60 to 70 units, there will be between 92 and 104 parking spaces in the below-grade parking garage.

43. The project will include two loading berths at 30 feet in length, one 20-foot service delivery space, and one 300-square-foot loading platform. Loading will be accessed from the 20-foot alley at the rear of the building.

### **Size and Scale of the Project**

44. The Opposition's primary objection to the building was the size and scale of the project. ANC 3E testified that this project will be the third tallest building and the most dense development in the neighborhood, which is incompatible and out of scale with the adjacent two-story garden apartments and the single-family homes to the west and south. ANC 3E further argued that the project is outside the Friendship Heights Regional Center.
45. FNA similarly argued that the project was not in scale with the immediate neighborhood. FNA testified that the Commission should not approve the project, because the height and density would be among the highest found along the entire Wisconsin Avenue corridor.
46. Eric Colbert, the Applicant's expert witness in architecture, testified that the project was sensitively designed to respond to the various frontages, such as the more dense, commercial frontage along Wisconsin Avenue and the lower scale neighborhoods to the west.
47. Mr. Colbert further testified as to the appropriateness of the size of the Project when reviewed in context and in relation to the existing and approved developments in the area. The view analysis submitted with the Modified Prehearing Submission illustrates the minimum visual impact of the project and establishes that the project will not adversely impact the community or nearby residential properties.
48. The OP Report concluded that the overall massing and design was acceptable and that the project would not adversely impact the adjacent residential properties.
49. Mr. Sher further argued that that project should not be evaluated based on what exists surrounding the project today but rather by looking at development of the Wisconsin Avenue Corridor as it will be planned for the future based on the Comprehensive Plan of 2006. At this Site, designated for medium-density residential and proximate to a Metrorail station entrance, it is appropriate to construct a three- to seven-story residential building with ground floor retail.
50. The Commission concurs with the Applicant's testimony and evidence and OP's conclusions. The height and density of the project are appropriate for the area and serve



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as a transition between the established lower density residential neighborhoods and the higher density commercial area.

51. The Commission finds that the height and the density of the project will not have adverse impact on the adjacent areas. The Commission finds that the project is not too big for the Site.

### **Traffic Impacts**

52. A major issue raised by the Opposition was that the project will adversely impact traffic in a community characterized by gridlock. ANC 3E presented generalized concerns related to traffic impacts, including allegations that the project would create unacceptable traffic impacts, cut-through traffic on residential streets, and illegal vehicle traffic in other nearby alleys. FNA presented expert testimony in an effort to establish potential adverse impacts on traffic related to the project.
53. Osborne George of O.R. George & Associates, the Applicant's expert in traffic engineering and transportation planning, testified that the road network serving the project currently operates at acceptable levels of service and will continue to do so upon completion of the project, factoring in approved projects for the area as well as including a two percent annual growth rate to account for reasonable growth. Mr. George concluded that the project will not be objectionable to the adjacent properties.
54. Mr. George also testified about proposed roadway improvements, which it had coordinated with DDOT. These roadway improvements included the removal of designated parking near the intersection of Wisconsin Avenue and Harrison Street to provide for a shared left-turn/through lane and a dedicated right-turn lane. These improvements were offered to improve overall circulation and efficiency of this intersection, not to mitigate potential impacts of the project. Furthermore, in his rebuttal statement, Mr. George indicated that the impetus for encouraging the improvements arose from the Applicant's interaction with the community, during which residents requested that the Applicant analyze this intersection, and recent area studies conducted by DDOT to improve existing traffic issues.
55. In its initial report dated February 27, 2007 (Exhibit 119) ("DDOT Report"), DDOT supported the findings of the Applicant's traffic impact analysis that no adverse impacts would result from the development and that the proposed roadway improvements are likely to improve the overall traffic operations near the Site. Ken Laden, the Associate Director for the Transportation Policy and Planning Administration of DDOT, testified for DDOT at the hearing and confirmed these findings.
56. The Opposition argued that the Applicant's analysis of traffic impacts was flawed and indicated that the Project would create adverse traffic conditions. Mr. Mehra, FNA's

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traffic expert, testified on behalf of FNA and critiqued the analysis presented by the Applicant's traffic expert.

57. Mr. Mehra raised the following issues (Exhibit 227): the Applicant's traffic study was incomplete, because it did not include certain analyses; the Applicant's traffic study included erroneous assumptions; the Applicant's traffic study included factual errors; and the Applicant's traffic study included erroneous modeling assumptions.
58. Prior to the continuation hearing on April 12, 2007, the Applicant submitted a Traffic Impact Assessment Amendment and Supplementary Information dated March 29, 2007 (Tab A of the Applicant's Submission of Additional Information, Exhibit 235). This supplemental analysis set forth revisions to the originally-submitted analysis and responded to some of the issues raised by FNA's traffic expert.
59. DDOT reviewed Mr. Mehra's report and the Applicant's supplemental analysis and responded in a report dated April 10, 2007 (Exhibit 245). In this report, DDOT reaffirmed its earlier finding that the project will not have an unacceptable impact on the surrounding transportation system.
60. The Applicant's traffic expert responded to the remaining issues raised by Mr. Mehra in his rebuttal testimony (Tab B of the Applicant's Rebuttal and Closing Statement, Exhibit 307).
61. The Commission adopts the Applicant's traffic expert's conclusions finding no adverse impact as a result of the project and DDOT's reports and conclusions confirming the findings and analysis of the Applicant's traffic expert. The Commission finds that the proposed measures at the intersection of Harrison Street and Wisconsin Avenue are not necessary mitigation measures for this project but instead will serve to improve existing traffic congestion in this area. The Commission, therefore, finds that the project will not have an adverse or unmanageable impact on the street system and other traffic conditions in the area.

### **Parking**

62. The Opposition argued that the proposed parking is not sufficient to meet the demands of the project. The Opposition argued that, as a result, cars would spill into the neighborhood and further exacerbate the parking problems that exist today. The Opposition further argued that the provision of three visitor spaces would not adequately accommodate visitors to the residential portion of the project.
63. The Applicant submitted that its parking range of 1.2 parking spaces per unit plus parking spaces for retail users and visitors to the project would more than satisfy the parking demand for the project. Furthermore, the Applicant proffered to restrict the ability of

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residents of the project to obtain Residential Parking Permits to help prevent excess cars from being parked on the residential streets.

64. The Applicant also testified that the project results in the elimination of the existing curb cuts on Wisconsin Avenue and results in the restoration of five on-street, metered parking spaces.
65. The report of the Applicant's traffic expert (Tab F to the PUD Submission) indicated that the parking provided was more than that required by zoning. Furthermore, the report noted that the project's parking supply had been planned to meet the projected need of the future land use to ensure no spill-over into the community.
66. The Commission finds that the parking provided is sufficient to accommodate the project, including visitors to both the retail and residential uses. Thus, the Commission finds that there will be no adverse impact on the nearby residential community.

**Loading and Use of the Alley for Access to the Project**

67. ANC 3E argued that the Applicant's plans to use the alley behind the project will create unacceptable gridlock.
68. ANC 3E further argued that use of the alley by the project will damage the quality of life for the residents who live adjacent to those alleys.
69. FNA testified similarly that the alley was not sufficient in size for use by loading vehicles and that too many conflicts would occur between vehicles accessing the parking garage and vehicles accessing the loading facilities.
70. The Commission requested that the Applicant review the issues raised by the Opposition and present a revised loading plan.
71. The Applicant, in its Submission of Additional Loading Information dated May 3, 2007 (Exhibit 303), set forth modifications to the loading facilities, addressing the adequacy of space for trucks to maneuver and the interaction between trucks and other vehicles utilizing the alley to access the residential and retail parking areas.
72. The primary changes included substantial expansion of the area in the P-1 level devoted to loading, relocation of the loading bays within the expanded loading area further inside the building away from the alley, movement of one car-share parking space and column into the building, and reconfiguration of the 300-square-foot loading platform area.
73. The Applicant's traffic expert stated that, with these modifications, trucks accessing all three loading bays will do so with ample clearance, even when all other bays are in use. In addition, the Applicant's traffic expert testified that vehicles using the bays will be able

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to safely and efficiently complete movements, thereby quickly freeing up the 20-foot alley for other vehicles. Furthermore, the Applicant's Traffic Expert found that the new configuration also decreases the likelihood of trucks backing up into areas where car drivers do not see them approaching. Overall, the Traffic Expert concludes that the revised loading configuration will provide adequate, efficient, and safe access for the vehicles using the facilities.

74. Although given an opportunity to respond to the Applicant's revised loading submission, neither FNA nor ANC 3E submitted a response.
75. The Commission finds that the modified loading configuration, as shown in the plan attached as Tab D to the Applicant's Submission of Additional Loading Information, is superior to the previously proffered plan. Furthermore, the Commission agrees with the Applicant's traffic expert that the modified configuration will provide adequate, efficient and safe access for vehicles using the facilities.
76. The Commission further finds that the use of the alley for access to the project's loading and parking facilities will not adversely impact traffic in the alley and will not adversely impact the residents in this square.
77. The Opposition also raised concerns regarding accessing the loading facilities from the alley at all.
78. ANC 3E argued that the requisite trucks could not access the loading facilities due to the narrowness of the alley.
79. The Applicant argued that, of the two potential locations for access to the loading facilities (i.e., Wisconsin Avenue or the 20-foot wide public alley), access from the alley was the better option. The alley provides more than sufficient maneuvering space, especially with the modifications to the loading facility and as a result of the alley configuration itself, with an intersection of a 15-foot alley near the berths and the angled area all providing for improved maneuverability.
80. The Applicant further argued that Wisconsin Avenue would not be a desirable location for loading. Trucks accessing the loading berths would likely disrupt traffic on Wisconsin Avenue. Vehicles' use of the loading area would also pose dangers for pedestrians using the sidewalk when a truck backs into the loading berth across the sidewalk. Moreover, location of a loading dock off of Wisconsin Avenue would eliminate a substantial portion of the proposed retail frontage and would result in undesirable curb cuts as well as the inability to restore the on-street parking in this location.

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81. The Commission also agrees with the Applicant and finds that loading should be located from the alley, which is the purpose for alleys in the District. The Commission finds that the 20-foot alley is dead-end and the current use of the alley by vehicles is minimal.

**Development Flexibility and Incentives**

82. The Applicant requests the following areas of flexibility from the C-2-B standards:

- a. *Rear Yard:* The Applicant seeks flexibility from the 15-foot rear yard requirement set forth in § 774.7 of the Zoning Regulations. The project provides a 10-foot rear yard (based on the Site abutting a 20-foot public alley) below the 20-foot horizontal plane; the project does not provide a rear yard above that horizontal plane. The project does not meet the normal rear yard requirement as a result of the project's reduced height and resulting design. The project has been designed to respond to its various frontages: the higher density and taller projects to the north in the Friendship Heights regional center as well as the lower scale residential development to the west and southwest. Due to the introduction of the residential courtyard in the middle of the building, which maximizes light and air to the residential units on the lower levels, the floor plates become wider and extend back toward the rear of the lot line. If a rear yard setback was incorporated on the first and second floors, the residential courtyard would be compromised or lost. This courtyard provides light and air for the residential units and is essentially relocated open space, achieving the goals of the rear yard requirement. In addition, if a rear yard were able to be provided, it would eliminate space that is currently provided for enclosed service facilities (such as the loading area and trash room).

Based on § 2405.5 of the Zoning Regulations, the Commission has the option to approve a rear yard greater or lesser than the normal requirement, depending upon the exact circumstances of the project. The Commission finds that, based on the circumstances of this project, as identified above, the rear yard requirement for this project can be reduced as proposed.

- b. *Lot Occupancy:* The Applicant seeks flexibility with respect to compliance with the lot occupancy requirements. Section 772.1 of the Zoning Regulations states that no building or portion of a building devoted to a residential use in a C-2-B District shall occupy the lot upon which it is located in excess of 80%. Because the project includes residential uses beginning on the first floor, lot occupancy of 80% must be achieved for each level. The first level, which contains only three residential units in the rear, has a lot occupancy of 100%. The second level has a lot occupancy of 84.7%, and the third level has a lot occupancy of 88.4%. Levels four through seven maintain a lot occupancy of less than 80%. The mean lot occupancy for the project is 75.5%. Similar to the rear yard flexibility, the

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Applicant requests the lot occupancy relief so that it can configure the building in a manner that is sensitive to the lower scale projects to the west as well as achieve courtyards, usable retail space, and enclosed service facilities.

The Opposition testified that the requested lot occupancy removes important green space and public open space that the project should provide.

The Applicant responded that there is no requirement for open space on the lot to be publicly available or green. In fact, the open space would likely be paved and used for private gathering space or service-type activities.

Based on § 2405.4 of the Zoning Regulations, the Commission has the option to approve a lot occupancy greater or lesser than the normal requirement, depending upon the exact circumstances of the project. The Commission finds that there is no specific harm or impact from the requested flexibility from lot occupancy. The project has been designed to address its abutting and nearby property owners and the requested flexibility can be granted, given the balance of other factors. Thus, the Commission finds that based on the circumstances of this project, as identified above, the lot occupancy requirement for this project can be reduced as proposed.

- c. *Loading:* The Applicant seeks flexibility from the loading requirements set forth in Section 2201.1. Although the project provides a required loading berth at 30 feet, a service/delivery space of 20 feet, and loading platforms with more than 300 square feet, the Applicant does not provide the required loading berth of 55 feet. Instead, the Applicant provides an additional loading berth at 30 feet. A 55-foot berth is not necessary to serve this type of development, as was testified to by the Applicant's Traffic Expert. Furthermore, a 55-foot truck would be unable to access the rear of the project through the existing alley system, and therefore, even if a berth was provided, it would be unusable by the residents of the project.

Based on § 2405.6 of the Zoning Regulations, the Commission may reduce or increase the amount of loading facilities depending on the uses and location of the project. Based on this project's proposed use with a maximum of 70 residential units and approximately 13,200 square feet of retail use, the Commission finds that the loading requirements can be reduced as proposed.

83. The Applicant initially requested flexibility from the residential recreation space requirements; however, since that time, the residential recreation space requirements have been officially repealed by Zoning Commission Order No. 05-02.
84. As part of the PUD, the Commission may grant such flexibility without the need for variance approval from the Board of Zoning Adjustment or compliance with the variance standards that might otherwise apply.

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**Public Benefits and Project Amenities**

85. The project incorporates the following public benefits and project amenities:

- a. ***Housing and Affordable Housing (§ 2403.9(f))***. The project constitutes a new residential development adjacent to a Metrorail station that will provide residential space beyond that permitted under existing zoning.

The Applicant shall dedicate 12% of the bonus residential density (approximately 6,800 square feet of gross floor area) to on-site affordable units. The affordable units will be reserved for those District of Columbia residents making 80% or less of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Area.

In addition, the Applicant shall contribute \$500,000 to the Lisner-Louise-Dickson-Hurt Home (the "Lisner Home"), a home serving the indigent elderly located two blocks from the Site, to underwrite the housing costs of operating four units of housing in its Community Residential Facility (the "CRF") for a period of 15 years. This amenity provides housing for the indigent elderly. Residents of the CRF have fixed incomes well below the 30% AMI level (average of \$10,781), and the average age of residents is 81.

ANC 3E argued that affordable housing should not be considered an amenity, because it would otherwise be required in accordance with the Inclusionary Zoning regulations. Furthermore, ANC 3E argued that the donation to the Lisner Home should not be considered an amenity, because it did not create new affordable housing, rather it simply maintained existing affordable housing.

OP testified that the Inclusionary Zoning regulations had not yet gone into effect and thus do not apply to this development.

The Commission finds that the provision of additional housing and affordable housing – both the creation of new on-site affordable housing and the maintenance of off-site affordable housing for the elderly – are valuable community benefits of the PUD that should be recognized.

- b. ***Special Value to the Neighborhood (§ 2403.9(i))***. The Applicant proposes several amenities that will provide special value to the neighborhood, including the following:

- (1) ***Enhancements to the Façade of the PEPCO Substation***. The Applicant shall update the PEPCO substation that is adjacent to the Site and has a bricked-over and damaged storefront façade. The Applicant proposes the following

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improvements: installation of new retail storefront-type windows; improvements and/or restoration of the building façade materials; and improvements and/or replacement of the entry door and clock. In addition, the Applicant will improve and beautify the streetscape in the public space abutting the PEPCO Substation. The Applicant will upgrade this storefront and streetscape and will maintain these improvements until the earlier of the following: (a) 15 years after the issuance of a certificate of occupancy or (b) such time when PEPCO or a subsequent landowner of the substation property chooses to redevelop or otherwise substantially alter the substation at 5210 Wisconsin Avenue, N.W. The Applicant has coordinated with the DC Commission on Arts and Humanities ("CAH") to create a plan whereby CAH will administer, commission, and install art work (or a set of works) within the storefront windows.

ANC 3E argued that this amenity should not be considered in the balancing test, because it served to benefit the project itself and would likely be achieved with a matter-of-right project.

Subsection 2403.7 of the Zoning Regulations specifically recognizes public benefits as adding attractiveness, convenience, or comfort to the occupants of the project. In addition, § 2403.13 permits public benefits to be located within one-quarter mile of the PUD site "if there is a clear public policy relationship between the PUD proposal and the off-site benefit." Thus, the Commission finds that the proffer can be considered as an amenity based on these provisions of the Regulations. Furthermore, the Commission finds that this public benefit will serve as an aesthetic benefit to the entire community. Accordingly, this amenity should be considered as an amenity for the project.

- (2) *Contribution to the Janney School.* The Applicant shall donate \$100,000 to the Janney Elementary School (the "School") Parent-Teacher Association, a local public elementary school serving the project, with approximately 465 students located at 4130 Albemarle Street, N.W. This contribution will fund the following projects: (a) \$30,000 for field turf installation and grading improvements at the School's soccer field, including a set-aside for ongoing maintenance; (b) \$10,000 for consultation with a security and safety expert for lighting improvements to the School's grounds as well as the purchase and installation of such improvements; (c) \$10,000 for improvements to the temporary overflow classroom structure that sits in the School's playground; (d) \$15,000 for the purchase and installation of new playground equipment for the pre-kindergarten students as well as additional surface tiles for the ground; and (e) dedication of remaining funds (estimated to be \$25,000) for the purchase of classroom computers.

The Opposition argued that this amenity should be of a greater amount and/or be devoted to different uses. The Commission reviews the amenities package



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presented by an applicant to determine whether it is appropriate given the development flexibility and incentives requested and the impacts of the project. The Commission does not make decisions as to whether certain amenities should be increased to the reduction or detriment of others. Thus, the Opposition's assertion is not appropriate for consideration by the Commission.

- (3) *Construction Management Plan.* The Applicant proposes a construction management plan intended to minimize potential adverse impacts resulting from the construction of the project.

ANC 3E generally argued that the construction management plan should not be considered an amenity, because it was inadequate and did not provide for protections for the neighborhood beyond that currently required. The only specific complaint set forth by ANC 3E relating to the construction management plan was that the plan did not specify that the Applicant would maintain a pedestrian walkway on the west side of Wisconsin Avenue throughout the construction process.

In response, the Applicant committed during its testimony to maintain a protected pedestrian walkway adjacent to the Site during construction at all times, with the limited exceptions when public space work must occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks.

The Commission finds that a construction management plan such as that proposed by the Applicant is not required and constitutes a benefit of the project. Thus, the Commission finds that the proffered plan does provide protections for the neighborhood beyond those required. The Commission finds that the Applicant has also addressed the specific complaint of ANC 3E related to the construction management plan and the pedestrian walkway. Therefore, the Commission finds that this amenity can be considered in the required balancing test.

- c. *Social Services/Facilities (§ 2403.9(g)).* The Applicant shall contribute \$30,000 to IONA Senior Services to expand the services of the IONA Bus, which takes seniors (predominantly from the Friendship Heights and Tenleytown neighborhoods) to grocery stores, pharmacies, department stores, and restaurants as well as to lunch programs and exercise classes. This amenity will provide support for a 20% increase (i.e., an additional 15 to 20 hours of operation per week), including evening trips to artistic and cultural events. Funds will cover an added driver, bus operations, and insurance costs.
- d. *Environmental Benefits (§ 2403.9(h)).* The Applicant shall develop the project to achieve U.S. Green Building Council LEED Certification under the LEED-NC v2.2 guidelines.

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The Applicant has agreed to post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy, in an amount equal to 2% of the construction cost for the project, such construction cost amount being that identified on the building permit application. When the project achieves LEED Certification, the Security will be released to the Applicant. In the event that the Applicant does not achieve LEED Certification for the project within 24 months after the date of the certificate of occupancy for the project, the Security will be released to the District, unless the District determines that the sustainable features, as built, provide value. If such finding is made, the District, in its sole discretion, shall determine whether the Security shall be released in part to the District and in part to the Applicant.

ANC 3E argued that the proffer of LEED Certification should not be considered an amenity, because it would be otherwise required by the Green Building Act, recently adopted by the D.C. Council. ANC 3E also argued that the proffer of LEED Certification does not result in any environmental benefits.

OP, in its supplemental report dated April 2, 2007 (Exhibit 234) (OP's Supplemental Report"), stated that the Green Building Act does not require (currently or in the future) LEED Certification at any level for private residential projects.

FNA further argued that LEED Certification should not be considered an amenity. FNA argued that, while the Applicant stated it would be the first residential building in the District to obtain this certification, in fact another residential building obtained certification in April 2007. FNA further argued that the Applicant's proffer only slightly exceeds the minimum requirement for LEED Certification.

The Applicant acknowledged the U.S. Green Building Council's recognition of another residential building in the District, but stated that this certification came well-after the Applicant's statement, at which point there were no such certified projects. Furthermore, the Applicant asserted that, while the project will not be the first residential project to obtain LEED Certification, it is still rare for a residential project to obtain this certification.

The Commission finds that, regardless of whether LEED Certification is rare for a residential project, the proffer is above what is required for a matter-of-right project and provides benefit. The Commission thus finds the LEED Certification, including the associated sustainable design features, to be an important environmental benefit and, thus, accepts the amenity as one to consider for this project.

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- e. ***Landscaping (§ 2403.9(a)).*** The Applicant shall provide above-standard paving materials for the public space abutting the project to create an aesthetically-pleasing streetscape, generally as shown on the plans submitted with the Modified Prehearing Submission and as finally approved by the Public Space Management Division of DDOT.
- f. ***Transportation Management Measures (§ 2403.9(c)).*** The Applicant shall include two car-sharing parking space in the project. In addition, the Applicant shall contribute \$40,000 to the creation and funding of a Friendship Heights Transportation Management Coordinator, whose job will be to identify and address transportation issues currently existing in the Friendship Heights Area. DDOT supported this proposed amenity, as indicated in its report dated February 7, 2007 (Exhibit 32), noting that the amenity was intended to address area-wide transportation issues and was not needed to mitigate traffic impacts of the project.

The Commission raised concerns regarding how this amenity would be formatted, the types of uses for the money, and whether the money could be legally accepted by the District. DDOT submitted a supplemental response dated April 4, 2007, further detailing the types of uses for the money, in the record at (Exhibit 236).

However, the Office of the Attorney General had advised the Commission that it has determined that money paid to the District pursuant to a PUD condition is not a gift and may not be used by a District agency until there is an appropriation by Congress. Nevertheless, the Commission is confident that the money will eventually be used for the purpose intended and, therefore, finds that the amenity deserves recognition as a public benefit of the PUD.

- g. ***Employment and Training Opportunities (§ 2403.9(e)).*** The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (DOES). Under this Agreement, the Applicant shall be required to use DOES as its first source to fill all new jobs created as a result of the construction of the project. In addition, the Applicant will make best efforts to fill at least 51 percent of these newly created jobs for, and apprentice and trainee positions with, District residents.

The Applicant has also committed to make a bona fide effort to utilize Local, Small, or Disadvantaged Business Enterprises ("LSDBE") certified by the D.C. Local Business Opportunity Commission ("LBOC") in order to achieve, at a minimum, the goal of 35 percent participation in the contracted costs in connection with design, development, and construction of the project.

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86. ANC 3E and FNA argued in general that the amenities and benefits were not commensurate with the flexibility and incentives requested and the adverse impacts of the project.
87. ANC 3E also argued that the Applicant did not hold a public meeting through the ANC to obtain public comment to the proposed amenities package.
88. The Applicant responded that it held a well-noticed, open, public meeting in the same location as ANC 3E's meetings to allow for public review and gather input as to the proposed project amenities and public benefits. The Applicant asserted that, as a result of this process, it has presented a thoughtful and comprehensive amenities package.
89. The Commission finds that the amenities have been tailored to specifically address items and programs within the immediate neighborhood, and the overall package was created as a result of community discussion and input.
90. The Commission finds that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects. The Commission finds that the benefits and amenities listed in Finding 85 are acceptable to be included as part of the balancing test required in § 2403.8 of the Zoning Regulations and deserve recognition as benefits and amenities of the PUD.

**Compliance with PUD Standards**

91. The application complies with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
92. The Commission finds that the project offers a high level of public benefits and project amenities. When compared with the amount of development flexibility requested and project impacts, the application satisfies the balancing test required in § 2403.8 of the Zoning Regulations.
93. The PUD Site area is approximately 22,500 square feet, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-2-B District, in accordance with § 2401.1(c) of the Zoning Regulations.
94. ANC 3E argued that the project did not meet the one acre minimum area requirements for a PUD in the existing R-5-B Zone District; that the PUD therefore required a waiver of the minimum area requirements under § 2402.1; that the Applicant was required to demonstrate, pursuant to § 2402.1(a), that the PUD "is of exceptional merit and in the best interest of the city or country"; and that the Applicant had not met that test. The Commission finds that it has consistently applied the minimum area requirement based on the zoning requested under the PUD. As stated in Finding 93 above, the project—with

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a site area of 22,500 square feet – meets the minimum area requirement of 15,000 square feet for a PUD in the C-2-B Zone District. Thus, the Commission finds that no waiver of the minimum area requirement is necessary.

95. The project has been evaluated under the PUD guidelines for the C-2-B District. The project is within the height and FAR permitted for a PUD within the C-2-B District. The height and mass have been sculpted to respond to the immediate context of the neighborhood.
96. The Opposition testified as to concerns related to the impact of the project on fire, school overcrowding, and emergency and medical services vehicles.
97. The Commission heard testimony from residents who believe emergency vehicles are currently using side streets to reach emergency calls due to congestion on Wisconsin Avenue.
98. According to the OP Report, Fire and Emergency Medical Services ("FEMS") responded that Wisconsin Avenue is wide enough to allow proper navigation through traffic and that it is rare that an emergency vehicle would use a side street to avoid traffic.
99. The Commission finds that, based on the minimal traffic created by this project and based on the FEMS response, there will be no adverse impacts on FEMS vehicles accessing emergency situations.
100. OP also indicated in its report that the Metropolitan Police Department ("MPD") expressed concern about the effect that construction could have on Wisconsin Avenue traffic flow.
101. In response, the Applicant committed during its testimony at the hearing to maintain the Wisconsin Avenue curbside lane open for traffic during the weekday morning rush hour, with limited exceptions during which times street improvements and/or utility work located in this public space must occur. The Commission finds that the Applicant's commitment addressed the concern raised by MPD.
102. The Applicant also testified that, based on similar projects in the area, there would be relatively few elementary school aged children in the project.
103. The Commission finds that there will be no adverse impact on the surrounding area. The Commission also finds that the project – incorporating only 60 to 70 additional residential units and approximately 13,200 square feet of retail space – will not have an adverse impact on the District's infrastructure, including schools, police, fire, and EMS services.

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104. The Commission finds that the project will provide additional economic boost to the Friendship Heights area and the District of Columbia, as indicated in the Economic Impact Analysis attached as Tab G to the PUD Submission.

**Consistency with Comprehensive Plan**

105. At the time the application was filed, the governing comprehensive plan was the Comprehensive Plan of 1998. The Applicant, in its PUD Submission, set forth in detail the project's consistency with that plan.
106. On March 12, 2007, the Comprehensive Plan of 2006 came into effect and became the governing document. The Applicant's expert witness testified in detail and submitted a report to the Commission (Exhibit 210) regarding the project's compliance with the Comprehensive Plan of 2006.
107. The Future Land Use Map of the Comprehensive Plan of 2006 designates the Site for Low-Density Commercial/Medium-Density Residential/Local Public Facilities. The Medium-Density Residential designation defines neighborhoods or areas where mid-rise (i.e., four to seven stories) apartment buildings are the predominant use. The Low-Density Commercial designation defines shopping and service areas that are generally low in scale and character and can include areas that are small business districts or large business districts. The project is consistent with this designation.
108. The Generalized Policy Map of the Comprehensive Plan of 2006 includes the Site in the Main Street Mixed-Use Corridor, which has a common feature of pedestrian-oriented environment with traditional storefronts and many with upper story residential or office uses. The project is consistent with this designation.
109. The Land Use Element (Chapter 3) of the Comprehensive Plan of 2006 sets forth the importance of a focus on transit-oriented and corridor development, which is a central theme throughout many elements of the plan. The Comprehensive Plan of 2006 recognizes the importance of fully capitalizing on the investment made in Metrorail and states that this requires better use of the land surrounding transit stations and along transit corridors. The plan further states that much of the city's planning during the last five years has focused on making better use of transit areas. The plan sets forth certain principles for management of these lands, including the following: a preference for housing above ground-floor retail uses; a preference for diverse housing types, including both market-rate and affordable housing units; a priority on attractive, pedestrian-friendly design; and a stepping down of densities away from each station.
110. The Opposition argued that the Metro Core Capacity Study, dated December 20, 2001, found that in the future there would be insufficient system capacity during peak hours in

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the central portion of the District and that the Commission should, therefore, not assume that the Metro can accommodate this development.

111. The Applicant noted for the Commission that the drafters of the Comprehensive Plan of 2006 were aware of and fully-informed by the Metro Core Capacity Study. Notwithstanding this information, the Comprehensive Plan of 2006 sets forth a central theme in the plan of concentrating future development near Metrorail and along transit corridors.
112. Furthermore, WMATA submitted a letter, dated April 10, 2007 (Exhibit 244), indicating that a number of the findings of the study no longer apply to current conditions or plans. Although WMATA did not take a position on this project, it did conclude that it enthusiastically supports vibrant, mixed-use, transit-oriented development.
113. The Commission finds that the Metro Core Capacity Study is not dispositive in its decision in this case, based on WMATA's letter and the specific findings of the Comprehensive Plan of 2006.
114. The Opposition further argued that, while the Applicant and OP term this project as a transit-oriented project, there are no standards or policies that define a transit-oriented development. Thus, identifying the project as transit-oriented development does not make it consistent with the Comprehensive Plan of 2006.
115. The Commission finds that the Comprehensive Plan of 2006 describes and discusses the principles of transit-oriented development in LU-1.3 and more specifically in § 306.4, which identifies the core principles for development of land around all of the District's neighborhood stations. The Commission finds that, based on these provisions, this project is consistent with and furthers the principles of transit-oriented development in the Comprehensive Plan of 2006.
116. The Comprehensive Plan of 2006 also stresses the critical housing issues facing the District, including, among other things, ensuring housing affordability, fostering housing production, and promoting home ownership. The new Housing Element recommends providing zoning incentives to developers proposing to build affordable housing, which should be considered as a public benefit for the purposes of granting density bonuses when new development is proposed. The PUD project is an ideal candidate for these incentives.
117. The Rock Creek West Area Element within which the Site is located, supports the development of underutilized sites along the major corridors. This area element, however, raises the issues of height, scale, character, and density as sources of concern. Policy RCW-1.1.1 encourages both residential and commercial development to be carefully managed to enhance existing scale, function, and character of the

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neighborhoods. Policy RCW-1.1.4 encourages projects to combine housing and commercial uses rather than projects that contain single uses, so long as scale and character are appropriate.

118. The Opposition argues that the project does not appropriately address the issues of height, scale, character, and density. The Applicant, however, argues that the project has been designed to enhance the physical character of the area and complement the materials, height, scale, and massing of the medium-density commercial and residential uses in the area, consistent with the Future Land Use Map.
119. The Commission finds that the project provides the needed stepping down of building heights intended in the Comprehensive Plan of 2006 and furthers the policy of providing for careful transitions along the avenues to nearby neighborhoods.
120. The Rock Creek West Area Element also emphasizes the need for a better variety of retail choices, including favoring neighborhood-serving retail, which this project provides. Policy RCW-1.1.3 promotes supporting and sustaining local retail uses. Similarly, Policy RCW-1.1.5 indicates a preference for local-serving retail uses providing a range of goods and services necessary to meet the needs of local residents.
121. The Rock Creek West Area Element raises the issues of traffic and parking. Specifically, the impacts of new developments on traffic and parking must be mitigated to the greatest extent feasible.
122. According to the Applicant, the PUD project will have no adverse impact on traffic, based on the findings of the Applicant's traffic expert as well as the conclusions of DDOT. Furthermore, the Applicant has provided more than sufficient parking in the project's below-grade parking garage and has agreed to prohibit residents of the project to obtain residential parking permits. The location of the project adjacent to multiple mass transit facilities, including the Metrorail station, as well as the project's incorporation of bicycle parking, shower, and changing room, and car-sharing spaces, all help to encourage reduced vehicle trips to and from the Site. The Applicant asserts that all of these efforts mitigate the impacts of the project on parking in the community.
123. The Opposition argues that the proposed project will adversely impact the traffic and parking in the area and thus the project is not consistent with the Comprehensive Plan.
124. The Commission finds that the Applicant's traffic expert's findings and DDOT's conclusions related to the impacts of the project, as well as various elements of the application to mitigate traffic and parking impacts, such as car sharing vehicles, provision of sufficient parking, and prohibition on residential parking permits for residents ensure that the Commission's land use decision, will not exacerbate congestion and parking problems in already congested areas. Furthermore, the Applicant's transportation



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measures – such as the contribution towards a Friendship Heights Transportation Management Coordinator and support in encouraging the reconfiguration of the Harrison Street and Wisconsin Avenue intersection – will help improve traffic conditions in the area.

125. The Comprehensive Plan of 2006 recognizes the importance of neighborhood conservation. A guiding principle of the plan is to protect, maintain, and improve the residential character of neighborhoods. The Rock Creek West Element (RCW-1.1.1) requires that future development in both residential and commercial areas be carefully managed to address infrastructure constraints and protect and enhance the existing scale, function, and character of these neighborhoods.
126. The Applicant presented testimony that the impacts of the project would not adversely impact the residential character of the low-scale neighborhoods to the west. The project has been designed to recognize and respond to the scale of that development, while reflecting the more dense character of Wisconsin Avenue. The Applicant argued that impacts of this size apartment house – with only approximately 35 more units than could be built as a matter of right – along with approximately 13,200 square feet of ground floor retail are minimal on the immediate neighborhood.
127. The Commission agrees with the Applicant and finds that the proposed project will not adversely impact the adjacent neighborhood. The Commission finds that the project is not inconsistent with the goals of neighborhood conservation as set forth in the Comprehensive Plan of 2006.
128. The Commission finds that the project is not inconsistent with the Comprehensive Plan of 2006, including the Future Land Use Map, the Generalized Policy Map, and the text.

#### **Office of Planning**

129. By the OP Report and through testimony presented at the public hearing, OP recommended approval of the application subject to the following:
  - a. Clarification to the construction management plan regarding impacts to Wisconsin Avenue and pedestrian mobility during construction.
  - b. Prior to the issuance of a certificate of occupancy, submission of a financial instrument guaranteeing LEED certification.
130. In its testimony at the hearing, the Applicant addressed OP's issues as follows:
  - a. The Applicant agreed to maintain a protected pedestrian walkway adjacent to the Site during construction, with the exception of when public space work must

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occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks.

- b. The Applicant noted that it had already agreed to submit a Security related to its amenity of LEED certification.
- 131. The OP Report also raised the issue as to whether the Applicant would proffer First Source Employment and LSDBE agreements as amenities.
- 132. In response, the Applicant agreed to enter into First Source Employment and LSDBE agreements as part of its amenities package, as set forth in Finding No. 85(g).
- 133. OP testified and also set forth in the OP Report that the project would have no adverse impact on the surrounding area or District, was not inconsistent with the Comprehensive Plan of 1998 or the Comprehensive Plan of 2006, and recommended approval of the project.
- 134. In response to the Commission's request for clarification as to the scope of the Green Building Act, the OP Supplemental Report set forth the applicability of that Act. OP concluded that the Act does not regulate the construction of privately-financed residential buildings, so that Act would not apply now or in the future to this project.
- 135. The Commission finds that each of the issues set forth in Finding No. 129 and Finding No. 131 as issues raised by OP have been resolved by or addressed in Finding No. 130 and Finding No. 132.

#### **District Department of Transportation**

- 136. In the DDOT Report and through its testimony at the March 8, 2007 public hearing, DDOT recommended approval of the application.
- 137. In its Supplemental Report dated April 4, 2007 (Exhibit 236) DDOT responded to the Commission's request for additional information related to the transportation amenity, referenced in Finding No. 85(f). DDOT's Supplemental Report set forth clarifications as to the use for the proffer in response to the Commission's request for such information. DDOT's Supplemental Report also concluded that a direct proffer of funds to DDOT for an amenity would be inappropriate and prohibited by District law. However, the donation could be submitted through the Office of Partnerships and Grants Development ("OPGD"), assuming that OPGD carefully reviewed the proffer and determined that the donation is permissible. General Counsel to OPGD reviewed the proffer and determined that such donation could be legally accepted by the District (Exhibit 262).
- 138. DDOT submitted a second supplemental report dated April 10, 2007 ("DDOT's Second Supplemental Report"). DDOT's Second Supplemental Report (Exhibit 245), provided a

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response to the supplemental traffic information submitted by the Applicant and a response to the testimony of Joe Mehra, FNA's traffic witness. DDOT concluded that, following a review of those materials, DDOT continued to support the project and application, finding that the project will not have a negative impact on the surrounding transportation system.

139. The Commission finds that DDOT's conclusions are persuasive. The Commission finds that the project will have no adverse traffic impacts. The Commission further finds that the transportation amenity can be accepted and will serve to benefit the transportation issues currently existing in the area.

#### **ANC 3E Report and Testimony**

140. By letter dated February 28, 2007 (Exhibit 117), ANC 3E indicated that it voted to oppose the project by a vote of 4-1. The bases for its opposition were as follows:
- a. The requested map amendment is not appropriate.
  - b. The project will have serious adverse impacts on the community.
  - c. The proposed amenities package does nothing to alleviate the tremendous burdens this project will place on its closest residential neighbors.
141. ANC 3E also submitted a resolution, approved by ANC 3E on February 8, 2007 (Exhibit 50). This resolution sets forth issues and concerns similar to those discussed in Finding No. 140, but raises the following additional issues and concerns:
- a. Use of the alley for access to both the PUD project's loading and the parking garage will turn the alley into a virtual street, seriously decreasing safety and quality of life for residents living nearby.
  - b. The loading docks cannot manage 30-foot trucks, with such length being inadequate and unrealistic, and a 30-foot truck cannot maneuver down the alley to access the loading dock.
  - c. The Applicant had only limited communications with concerned residents and did not meet with some community groups that had objections to the proposal in order to reach a consensus.
  - d. The Applicant did not work with ANC 3E to discuss the amenities package at a regular public ANC 3E meeting.

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- e. The project will result in already scarce parking spaces being taken away from community residents by the project's customers, employees, and guests, because the project does not provide adequate parking.
  - f. The project will strain even further the District's infrastructure, including streets, schools, police, fire, and EMS services.
  - g. The construction management plan does not protect the neighborhood and does not specify that the developer would maintain a pedestrian walkway on the west side of Wisconsin Avenue throughout the construction process.
142. ANC 3E testified at the hearing through Commissioners Lucy Elridge and Carolyn Sherman. The primary issues raised in the oral testimony include the following:
- a. Rezoning to C-2-B with a PUD is incompatible with the Comprehensive Plans of 1998 and 2006 and is inappropriate for the Site, and rezoning to C-2-A would be compatible.
  - b. The project will have serious adverse impacts due to the scale and size of the project, loss of buffer zone, the entrance to the parking and loading facilities from the alley, increased traffic, and scarcity of on-street parking.
  - c. The amenities do not mitigate the adverse impacts.
143. ANC 3E also presented arguments in its filing dated April 9, 2007 (Exhibit 248), that primarily reference the importance of neighborhood conservation and impacts on neighborhoods as set forth in the Comprehensive Plan of 2006.
144. The Commission finds that the issues and concerns raised by ANC 3E have been fully addressed throughout this Order, and the Commission finds that all of the issues and concerns have been addressed or resolved. The Commission finds that the specific issues and concerns have been resolved as follows:
- a. The requested map amendment to C-2-B in the context of this PUD is appropriate and is consistent with the Comprehensive Plan of 2006, as set forth in Findings No. 25 through 39.
  - b. The project is not inconsistent with the Comprehensive Plan of 2006, as set forth in Findings 106 through 129.
  - c. The project will not have serious adverse impacts on the community, as follows:
    - (1) No adverse impact based on the size and scale of the project, as set forth in Findings No. 44 through 51.

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- (2) No adverse impact based on loss of a buffer zone because the project does transition and step down from the more dense commercial corridor to the lower-scale residential, as set forth in Findings No. 44 through 51 and Finding No. 119.
  - (3) No adverse impact based on the use of the alley for the entrance to the loading and parking facilities, as set forth in Findings No. 67 through 81.
  - (4) No adverse impact based on traffic generated by the project, as set forth in Findings No. 52 through 61.
  - (5) No adverse impact based on parking on residential streets, as set forth in Findings No. 62 through 66.
  - (6) No adverse impact on the District's infrastructure, including schools, police, fire, and EMS services, as set forth in Findings No. 96 through 103.
- d. The Applicant did have meaningful contact with the community and ANC 3E to review the project and the proposed amenities package, as set forth in Findings No. 87 through 90 and Findings No. 146 through 149.
  - e. The proposed amenities package when balanced with the development incentives and flexibility requested and the impacts of the project are sufficient, as set forth in Findings No. 85 through 90.
145. The Commission afforded the views of the ANC 3E the "great weight" to which they are entitled.

### **Community Interaction**

146. ANC 3E argued that the Applicant had only limited communications with concerned residents and did not meet with some community groups that had objections to the proposal in order to reach a consensus.
147. In its rebuttal statement (Exhibit 307), the Applicant set forth in detail the breadth of its community interaction, including that, over more than a year, the Applicant's team visited with neighbors living close to the Site on more than 50 occasions, the Applicant's team presented at or facilitated four public meetings, the Applicant disseminated hundreds of fliers, and the Applicant maintained a website with all materials posted and contact information for questions or comments.

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148. The Applicant also set forth in its rebuttal a summary of modifications made to the project in response to comments from the community prior to submission of the application.
149. The Commission finds that, although greater consensus was not reached for this project, the Applicant has established that it did seek community input and comment. Furthermore, the Commission finds that the neighborhood is divided in its support and opposition for this project, finding that many organizations and residents support the project and many organizations and residents oppose the project.

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of this project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the construction of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than is achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse impact on any nearby properties. Residential use with ground floor retail is appropriate for the Site. The size and scale of the project are appropriate for the Site, as the project has been appropriately designed to respect the surrounding areas. The impact of the project on the surrounding area is not unacceptable.
6. The application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

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7. The number and quality of the project benefits and amenities offered are a sufficient trade-off for the flexibility and development incentives requested.
8. Approval of the application is appropriate, because the project is consistent with the present and future character of the area.
9. Approval of the application is not inconsistent with the Comprehensive Plan.
10. The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 3E's opposition and has responded to or addressed each of its issues and concerns.
11. The approval of the application will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. The rezoning of the PUD Site to C-2-B is consistent with the purposes and objectives of zoning as set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01).
13. Notice was provided in accordance with the Zoning Regulations and applicable case law.
14. The application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.
15. The Commission is required under § Section 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations (as reflected in Findings No. 129 through 135). For the reasons stated above, the Commission concurs with OP's recommendations and has included the recommended conditions into this Order.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the application for consolidated review of a Planned Unit Development and for a Zoning Map amendment to C-2-B. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Eric Colbert & Associates, dated February 15, 2007 (Exhibit 42), as supplemented by the

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Post-Hearing Submission of Additional Loading Information (Exhibit 303) (collectively the "Plans"), as modified by the guidelines, conditions, and standards herein.

2. The PUD shall be a residential project, containing between 60 and 70 residential units, with ground floor retail. The maximum density of the project shall be 5.25 FAR, or approximately 118,125 square feet of gross floor area, with approximately 13,200 square feet of gross floor area devoted to commercial use.
3. The maximum height of the building shall be 79 feet, with steps down in height on the Wisconsin Avenue frontage and at the rear of the building, as shown on the Plans. The project may include a roof structure with a height not to exceed 12 feet, with the setbacks shown on the Plans.
4. The project shall include 1.2 parking spaces per residential unit (rounded to the next whole number) in the below-grade parking garage, based upon the final unit count. In addition, the project shall also include 15 retail parking spaces, three residential visitor parking spaces, and two car-sharing spaces. The project shall provide loading as shown on the Plan dated May 1, 2007, submitted as Tab D of the Applicant's Post-Hearing Submission of Additional Loading Information.
5. The project shall include streetscape improvements for the public space abutting the project as shown on Sheet 29 of the Plans and the public space abutting the adjacent PEPCO substation, both of which are subject to final approval of the details by the Public Space Management Division of DDOT.
6. The Applicant shall provide affordable housing as described in the summary attached as Tab A in the Prehearing Submission (Exhibit 23). The Applicant shall have the flexibility to make minor modifications to the affordable housing program, so long as the total amount of affordable housing does not fall below 12% of the bonus residential density. The affordable units shall be reserved for households making no more than 80% of the Area Median Income.
7. The Applicant shall contribute \$500,000 to the Lisner Home to be used by the Lisner Home to underwrite the housing costs of operating four residential units in its Community Residential Facility for a 15-year period of time. The Applicant shall make this contribution, accompanied by a letter requesting that the contribution be placed in a restricted fund for this use, prior to the issuance of a certificate of occupancy for the project.
8. The Applicant shall upgrade the storefront façade of the adjacent PEPCO substation with the following improvements: installation of new retail storefront-type windows; improvements and/or restoration of the building façade materials; and improvements and/or replacement of the entry door and clock. The Applicant shall complete these



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upgrades prior to the issuance of a certificate of occupancy. The Applicant shall maintain these improvements until the earlier of the following: (a) 15 years after the issuance of a certificate of occupancy for the subject PUD or (b) such time when PEPCO or a subsequent landowner of the substation property chooses to redevelop or otherwise substantially alter the substation at 5210 Wisconsin Avenue, N.W. The Applicant, in conjunction with PEPCO, shall make the display windows available for the installation of public artwork by the D.C. Commission on the Arts and Humanities, in accordance with Exhibit 2 of the Applicant's Modified Prehearing Submission.

9. The Applicant shall contribute \$100,000 to the Janney Elementary School PTA for the specific purposes set forth in Section III E of the Applicant's Prehearing Submission. The contribution shall be accompanied by a letter to the PTA stating the purposes for the money and the amount for each purpose, as set forth in Finding No. 85(b)(2) above. The Applicant shall make this contribution prior to the issuance of a certificate of occupancy.
10. The Applicant shall contribute \$30,000 to IONA Senior Services for purposes of expansion of the IONA Bus service, as more fully set forth in the Applicant's PUD Submission. The Applicant shall make this contribution prior to the issuance of a certificate of occupancy.
11. The Applicant shall provide approximately 13,200 square feet of ground floor retail space, as shown on the Plans, and that includes at least three distinct retail/service uses on the ground floor of the building. Each retail space shall have its primary entrance from the sidewalk on Wisconsin Avenue and shall be subject to the following further restrictions:
  - a. No more than 3,500 square feet shall be leased to a branch bank. ATMs (Automatic Teller Machines) shall be permitted but do not count toward the three distinct ground floor retail uses.
  - b. To ensure adequate window coverage on the Wisconsin Avenue retail portions of the building, the Applicant shall construct the retail space in accordance with the Plans and shall not alter this design through modifications or amendments to make the total glass area any smaller.
  - c. The restrictions set forth in Condition 11 shall remain in effect for a period of 15 years following the issuance of a certificate of occupancy.
12. The Applicant shall provide \$40,000 to the District of Columbia with the condition that the moneys may only be used to fund a Friendship Heights Transportation Management Coordinator, whose job would be to identify and address transportation issues currently existing in the Friendship Heights Area. This payment shall be made prior to the issuance of a building permit for the project.

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13. The Applicant shall abide by the terms of the construction management plan proffered in the record at Tab B of the Prehearing Submission. In addition to the terms set forth therein, the Applicant shall maintain a protected pedestrian walkway adjacent to the Site during construction, with the exceptions of when public space work must occur, such as sidewalk, curb, and gutter installation; utility work; and other associated tasks. The Applicant shall also maintain the Wisconsin Avenue curbside lane open for traffic during the weekday morning rush hour, with limited exceptions during which times street improvements and/or utility work located in this public space must occur.
14. The Applicant shall obtain LEED Certification for the project. The Applicant shall post a bond, letter of credit, escrow account, or other similar security ("Security") prior to the issuance of a certificate of occupancy for the project, in an amount equal to 2% of the construction cost for the project shown on the building permit application. When the project achieves LEED Certification, the Security shall be released to the Applicant. In the event that the Applicant does not achieve LEED Certification for the project within 24 months after the date of the certificate of occupancy for the project, the Security will be released to the District.
15. The Applicant shall enter into and abide by the terms of a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve the target goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, and construction of the project.
16. The Applicant shall enter into and abide by the terms of a First Source Employment Agreement with the Department of Employment Services. This Agreement will require the Applicant to make best efforts to achieve the goal of utilizing District of Columbia residents for at least 51 percent of the new jobs created by the construction of the PUD project.
17. The Applicant shall include language in all documents related to the purchase and sale of the residential units that owners of the units in the building are prohibited from applying for residential permit parking stickers from the District of Columbia.
18. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, bicycle storage rooms, shower and changing room, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change;

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- c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction provided that there is no reduction in quality;
  - d. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
  - e. To vary the number of units from 60 to 70 total apartment units, with a parking ratio of 1.2 spaces per unit based on the final count of apartment units;
  - f. To adjust the placement of windows, balconies, balcony railings, and privacy screens as necessary based upon the final unit count and layout of demising walls, so long as the adjustments do not materially change the exterior appearance of the building;
  - g. To vary the location and placement of the green roof on the highest roof level to maximize aesthetics and stormwater management considerations, so long as the proposed size of the green roof is not decreased;
  - h. To make refinements to the garage configuration, including layout, location and design of parking spaces and/or other elements, so long as the total number of parking spaces provided complies with the PUD approval and the configuration of the spaces, drive aisles, etc. comply with the dimensional requirements of the Zoning Regulations;
  - i. To install awnings over some or all of the retail space windows and to install signage for retail users based upon the retail leasing after construction of the project; and
  - j. To modify the number and location of doorway entrances from Wisconsin Avenue to the retail spaces based on the final configuration and location of the retail spaces in accordance with this Order.
19. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the Site and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

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20. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
21. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
22. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On June 11, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to approve).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 30, 2007, by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on OCT 26 2007.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****Z.C. Order No. 07-12****Z.C. Case No. 07-12****George Washington University: Mount Vernon Campus – Campus Plan Amendment  
and Further Processing of Pelham Replacement Project****(Square 1374, Lot 50)****September 17, 2007**

This case is an application by the George Washington University (the “University” or the “Applicant”) requesting special exception approval under the campus plan provisions of the Zoning Regulations at 11 DCMR §§ 3104.1 and 210 for an amendment to an approved campus plan for the University’s Mount Vernon campus and further processing under the amended plan to allow the construction and use of the proposed Pelham Replacement Project. In accordance with § 210 of the Zoning Regulations, this case was heard and decided by the Zoning Commission (the “Commission”) using the rules of the Board of Zoning Adjustment at 11 DCMR § 3100, *et seq.* The components of the Applicant’s request were the reallocation of 22,761 square feet of gross floor area from other approved campus plan projects to accommodate a larger new residence hall than was previously approved in the campus plan, construction of the new Pelham Replacement Hall (the “Project”) that will replace the existing Pelham Hall, and construction of a new secondary access road on the campus.

**HEARING DATE:** July 2, 2007

**DECISION DATE:** September 17, 2007

The zoning relief requested in this case was self-certified, pursuant to 11DCMR § 3113.2.

**FINDINGS OF FACT**

1. Advisory Neighborhood Commission (“ANC”) 3D was a party in this proceeding. The Commission denied a request for party status from Mr. and Mrs. Steven Gardner on behalf of the W Street Neighbors as untimely and for failure to articulate an appropriate rationale for being granted party status. The Commission also noted that a separate request for party status from Mr. Thomas Bradley was withdrawn. (Tr. at pp. 8-10.)
2. The Mount Vernon campus, located at 2100 Foxhall Road, N.W. (Square 1374, Lot 50), is designated as “Institutional” on the Future Land Use Map of the Comprehensive Plan.

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The campus is zoned R-1-A and R-1-B and is subject to the terms and conditions of the current Mount Vernon Campus Plan, described below.

3. The University's current campus plan for the Mount Vernon campus, for the period 2000 to 2010, shows the location, height, and bulk of present and proposed improvements as required by 11 DCMR § 210.4 (the "Mount Vernon Campus Plan" or the "Campus Plan"). The Board of Zoning Adjustment ("BZA") approved the Campus Plan by BZA Order No. 16505 (December 15, 1999). (Ex. 11, Pre-Hearing Statement (June 18, 2007), at p. 1.)
4. Two further processing applications were approved concurrently with the Mount Vernon Campus Plan: an addition to Somers Hall to provide additional student residential space and an athletic facilities project that included the construction of a softball field and an elevated tennis court structure with underground storage, athletic support space, and parking for 175 vehicles. No other further processing applications have been filed since that time. (Id.)

#### Project Overview

5. The Project site is the location of the existing Pelham Hall, in the southwest quadrant of the Mount Vernon campus. To the east are the elevated tennis courts structure and underground parking garage referenced above. The Project site is located off Whitehaven Parkway, across the street from the Saint Patrick's Episcopal Day School, and is adjacent to single-family residential homes on Berkeley Terrace. (Tr., Zoning Commission Public Hearing (July 2, 2007), at pp.15-16.)
6. The approved Campus Plan identified Pelham Hall as a site for potential Residential Mixed-Use Development on its "Conceptual Site Plan" and contemplated that the replacement building would contain 70,000 square feet of gross floor area and include new residential space, a potential executive training facility, and an underground parking garage accommodating 100 vehicles. (Ex. 11 at p.1; Tr. at p. 18.)
7. In developing a plan for the replacement of Pelham Hall, the University evaluated its current space requirements and institutional priorities in light of its ongoing efforts to foster and enhance the living and learning experience at the Mount Vernon campus. The University determined that a larger residential facility was more appropriate than the 70,000-square-foot facility already approved. (Ex. 11 at 1; Tr. at pp. 116-19.)
8. The Pelham Replacement Project will provide approximately 287 beds for undergraduate student housing, as well as three apartments for staff. The Project will also provide below-grade residential/campus life and building support space, including a dining facility, which will enable the University to transition space currently accommodating student support functions in and around the campus quadrangle to academic purposes,

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consistent with the planning objectives of the Campus Plan. The Project will not include the executive training facility or underground parking contemplated in the approved Campus Plan. (Ex. 11 at pp. 1-2; Tr. at pp. 19-20.)

9. Currently, regular campus-related traffic enters the Mount Vernon campus via an entrance on Whitehaven Parkway, and Pelham Hall is accessed from the north via a perimeter road that loops around the northwest and west portions of the campus. (Tr. at pp. 65-66.) The Conceptual Site Plan within the approved Campus Plan showed an access road that would extend the perimeter road to the south and connect the Pelham site to Whitehaven Parkway. (See Appendix A of the approved Campus Plan; Tr. at pp. 16, 68; see also Figures 2B, 4, 6, 8, 11, 13, and 14 of the approved Campus Plan (depicting the access road).) As part of the Pelham Replacement Project, the University planned to construct the access road, which will supplement the existing campus entrance off Whitehaven Parkway. Once completed, the access road will: (1) allow for two-way direct access to the loading dock of Pelham Replacement Hall from Whitehaven Parkway; (2) allow the University to restrict the use of the perimeter road to one-way, university-related traffic; and (3) continue to direct regular campus-related traffic away from the W Street entrance to the campus. (Ex. 11 at pp. 6, 7-8; Tr. at pp. 24-25.)

#### Campus Plan Amendment

10. The Project will contain approximately 92,761 square feet of gross floor area, which represents approximately 65,100 net new square feet of gross floor area on the Mount Vernon campus. The Project's approximately 287 beds for undergraduate student housing represent approximately an additional (net) 209 beds and will bring the total number of student beds on the Mount Vernon campus to approximately 700. This increase is consistent with the resident student population estimates set forth in the Campus Plan. (Ex. 11 at p. 4; Tr. at p. 19.)
11. In order to efficiently address the University's planning priorities, the University requested an amendment to the Campus Plan to exceed the gross floor area guideline set forth in the Campus Plan for the Pelham site by approximately 22,761 square feet. (Tr. at p. 20.) At the request of the Commission, the University indicated in its post-hearing submission dated July 30, 2007 that it intended to accommodate the additional gross floor area associated with this Project by reallocating gross floor area from two other proposed buildings in the Residential/Campus Life/Athletic use category. Specifically, the University will subtract 761 square feet of gross floor area from the Ames Hall Expansion and 22,000 square feet of gross floor area from the Athletic Center (Fitness Addition), identified in Exhibit F of the existing Campus Plan. As a result, there will be no increase in either the overall campus floor area ratio ("FAR") or the total amount of FAR in the Residential/Campus Life/Athletic use category. (Ex. 40, Post-Hearing Submission (July 30, 2007), at p. 2.)

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Community Outreach and Consensus

12. The University engaged the community in the planning process through quarterly meetings established by the Campus Plan, as well as more focused conversations with interested neighbors. (Ex. 11 at p. 2; Tr. at pp. 20-25; 54.) As a result of these conversations, the University came to consensus with the residents of Berkeley Terrace on various issues associated with the Project, which was memorialized in a letter agreement attached to the Pre-Hearing Submission as Exhibit E. (Tr. at pp. 23-24; Ex. 11.) Both parties requested that the terms of the agreement be made conditions to the approval of the Project. (Ex. 11 at p. 2.)
13. The University also entered into a letter agreement with St. Patrick's School, attached to the Pre-Hearing Submission as Exhibit G, that addressed both construction management issues and post-construction traffic and operations issues. (Tr. at p. 24; Ex. 11.) Both parties requested that the terms regarding post-construction traffic and operations issues (Exhibit B of the St. Patrick's agreement) be made conditions to the approval of the Project. (Ex. 11 at p. 2.)
14. Before and after the public hearing, the University met with residents to the north of campus along W Street, primarily regarding landscape issues. (Tr. at pp. 24-25; Ex. 11 at p. 2.) Based on these discussions, the University developed an Enhanced Landscape Plan for the Mount Vernon campus that included additional plantings around the campus perimeter. The Enhanced Landscape Plan featured a selection of durable, hearty, and appropriate plantings and included commitments by the University to maintain the landscaping. The Enhanced Landscape Plan was filed with the Commission as Exhibit A of the Applicant's July 30, 2007 Post-Hearing Submission. (Ex. 40.) Certain W Street neighbors also raised stormwater management issues.

Project Design and Impact

15. As detailed by the Applicant's architectural expert at the public hearing, the Pelham Replacement Project was designed to provide a functional and architecturally appropriate building that will minimize impacts on the surrounding residential community. (Ex. 11 at pp. 5, 7-8; Tr. at pp. 26-35.)
  - a. The design of the building drew from the palette of existing materials prevalent throughout the campus and featured the use of red brick and a hip roof with a slate-like appearance. (Tr. at pp. 34-35.)
  - b. The height of the building will be consistent with the Campus Plan, as the roofline of the Project will not exceed the height of the existing Pelham Hall, as required by Condition 8(f) of the Mount Vernon Campus Plan. (Tr. at p. 31.)



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- c. The building will be set back 190 feet from the property line along Berkeley Terrace, which will exceed the 125-foot set back required by Condition 8(d) of the Mount Vernon Campus Plan. (Tr. at p. 32.)
  - d. The building will include a courtyard entry oriented toward the center of campus, reducing student activity on the west side of the building facing Berkeley Terrace. (Tr. at p. 29.)
16. The University worked with residents directly affected by the Project to reduce the building's physical impact and modified the design in response to community comments. (Ex. 11 at pp. 5, 7-8; Tr. at pp. 28-34.)
- a. The building footprint was sited to the south and east (away from Berkeley Terrace) to the extent possible, while still accommodating the setback and "protected areas" outlined in the Campus Plan. This will allow the new building to take advantage of existing natural contours and grade changes to limit its visual impact on adjacent Berkeley Terrace residences. (Tr. at pp. 32-34.)
  - b. The University lowered the roofline on the north wing of the building by one floor to mitigate concerns that light and noise emanating from windows on the west (Berkeley Terrace facing) side of the north wing of the building might have an adverse impact on residential neighbors. (Tr. at pp. 32, 33.)
  - c. The Project featured a dense landscaping barrier, including coniferous and other year-round screening elements, as part of its landscape plan to mitigate concerns regarding adverse visual impacts. (Tr. at p. 33.)
17. The building will incorporate a number of sustainable design features and the University will achieve the equivalent of a minimum of sixteen LEED-NC v.2.2 points in the construction of the Project. (Ex. 11 at p. 5; Tr. at p. 35.)

#### Stormwater Management

18. At the public hearing, a University representative testified regarding the University's stormwater management practices. (Tr. at pp. 35-40.) Since the approval of the existing Campus Plan, the University has implemented a stormwater management improvements for its Mount Vernon campus. The improvements, which include systems that capture water on campus and direct it into the city's stormwater system, manage the impacts caused by stormwater leaving the Mount Vernon campus. (Tr. at pp. 35-38.)
19. The Pelham Replacement Project included a series of improvements that will provide stormwater management and quality control. The proposed stormwater management improvements associated with the Pelham Replacement Project, in conjunction with

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earlier improvements, will manage natural watershed and site-generated runoff from the project site. (Tr. at pp. 38-40; Tr. at pp. 62-63.)

20. In its post-hearing submission, the University provided further explanation of its storm water features on the northeastern quadrant of campus and clarified that stormwater does not leave the Mount Vernon campus along W Street, because W Street is at a higher elevation than the campus itself. (Ex. 40.)

#### Access, Loading, and Traffic

21. The loading and service facility for the Pelham Replacement Project will be accessed from the two-way access road from Whitehaven Parkway to the Project, which will limit the need for vehicles to use the existing perimeter road to reach the building. (Ex. 11 at pp. 6, 7-8; Tr. at p. 44.) The access road was shown on a conceptual site plan included in the approved 2000 Mount Vernon Campus Plan. (Tr. at pp. 16, 68.)
22. Upon completion of the access road, the University will restrict the use of the perimeter road to one-way, university-related traffic and remove five surface parking spaces along the perimeter road which are adjacent to the residents' backyards. (Tr. at p. 28; Tr. at p. 85.) Use of the additional access point on Whitehaven Parkway, an institutional street, will direct regular campus-related traffic away from the W Street entrance, a key component of the existing Campus Plan. (Ex. 11 at pp. 6, 7-8; Tr. at pp. 44-45.)
23. During the public hearing, the Applicant's traffic consultant testified that the additional resident students and activity associated with the Project will not result in any appreciable increase in traffic. (Tr. at pp. 45-46.)

#### Section 210 Evaluation

24. The Commission finds that the proposed Pelham Replacement Project is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions for the following reasons:
- a. The building will be sited approximately 190 feet to the south and east away from adjacent residential properties and will take advantage of existing contours and vegetation that will provide a natural barrier for noise and visual impacts. The Project will include the addition of a dense landscaping barrier immediately surrounding the Pelham Replacement Hall as well as enhancements to landscaping surrounding the campus perimeter that will further reduce noise and visual impacts.
  - b. The roofline of the Project will not exceed the height of the existing Pelham Hall.

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- c. The building's main entrance and courtyard will be located on its east side facing the center of the campus, away from the surrounding residential community, and the building's loading facility will be located in its southeast corner, between the Pelham Replacement Building and the existing tennis courts and will be oriented toward Whitehaven Parkway, an institutional street. This will further limit noise and visual impacts.
  - d. The University continues to maintain adequate parking on campus, enforce parking policies that are intended to minimize neighborhood impacts, and operate an inter-campus shuttle bus system with sufficient capacity to absorb the addition of approximately 209 resident students.
  - e. The access road connecting the Pelham Replacement Project to Whitehaven Parkway will provide direct construction and loading access from Whitehaven Parkway and will allow the University to restrict the use of the existing northwest perimeter road.
  - f. The application for an amendment did not propose any change in the existing student or faculty and staff population caps, nor did it propose an increase in the overall gross floor area approved under the Campus Plan.
  - g. The proposed stormwater management improvements associated with the Pelham Replacement Project, in conjunction with earlier improvements, will manage natural watershed and site-generated runoff at the Project site.
  - h. The design of the new building will enhance the visual quality of the campus.
25. In accordance with 11 DCMR § 210.8, the Applicant demonstrated that the proposed building will be within the FAR limit approved for the campus as a whole. The Mount Vernon Campus Plan approved an overall campus density of 0.49 FAR, below the maximum density of 1.8 FAR permitted under the Zoning Regulations based on the underlying R-1-A and R-1-B zoning. The existing campus density is 0.26 FAR. The proposed Campus Plan amendment and further processing application will not increase the approved campus density limit. After the proposed addition of 65,100 net new square feet of gross floor area, the campus density will remain below the maximum density of 0.49 FAR permitted under the approved Campus Plan. (Ex. 11 at pp. 8-9.)
26. The Commission finds the proposed campus plan amendment and further processing will further the goals and policies of the Comprehensive Plan, including policies aimed at encouraging the provision on-campus housing. (Ex. 11 at p. 9.)

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Government Agency Reports

27. By report dated June 22, 2007, the Office of Planning ("OP") recommended approval of the campus plan amendment and approval of further processing for the replacement of Pelham Residence Hall. In its report, OP noted that the University had designed the Project to be "as unobtrusive as possible to the nearest neighbors on Berkeley Terrace" and stated that "it is not expected that the proposed dormitory will cause an increase in objectionable conditions." (Ex. 13.)
28. By report dated June 26, 2007, the District Department of Transportation indicated that it reviewed and agreed with the Applicant's Transportation Impact Study and supported the application provided that the University continued its current shuttle operations and the Mount Vernon campus parking policy, as required under the 2000 Mount Vernon Campus Plan. (Ex. 16.)

Advisory Neighborhood Commission 3D

29. At two regular public meetings on May 2 and June 6, 2007, ANC 3D heard two presentations from the Applicant and, at the June 6 meeting, voted to support the application for special exception approval of a campus plan amendment and further processing of the Pelham Replacement Hall, with conditions. (Ex. 12.) First, ANC 3D requested that the University undertake a comprehensive stormwater management plan for the entire campus. Second, ANC 3D requested that the university reallocate the gross floor area for the Pelham Replacement project from the proposed Hillside dormitories site identified in the existing Campus Plan. Third, ANC 3D requested that the University implement the landscaping buffer outlined in the 2000 Campus Plan. Fourth, ANC 3D requested that the University use its best efforts to reach a signed agreement with its W Street neighbors on issues of concern.
30. The Commission finds that the issue of a comprehensive stormwater management plan for the entire campus is outside the scope of this proceeding, which concerns only the requested amendment of the approved Campus Plan and further processing of the Campus Plan to permit construction of the Pelham Replacement Project. The University will include an update on its stormwater management approach in its next campus plan. (Tr. at pp. 21-22.)
31. The Commission credits the Applicant's testimony that the proposed reallocation of gross floor area from the Ames Hall Expansion and Athletic Center (Fitness Expansion) will not result in an increase in the overall gross floor area approved under the Campus Plan and is consistent with the overall campus plan development limitations set forth in the Campus Plan. (Tr. at pp. 22-23.) The University identified proposed facilities in the Residential/Campus Life/Athletic use category that will be downsized to accommodate the additional FAR for the Pelham Replacement Project. The Commission does not agree

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with ANC 3D that the University should be required to reallocate gross floor area from the approved Hillside dormitory site.

32. The Commission finds that the Applicant has met with its W Street neighbors and developed an enhanced landscaping plan for the Mount Vernon Campus. (Tr. at pp. 22, 24-25.) The Commission also finds that the University's enhanced landscaping plan will implement the landscaping buffer outlined in the 2000 Campus Plan. Accordingly, the Commission finds that the University has satisfied these two conditions of the ANC's approval.

#### Persons in Support or Opposition

33. The Commission heard testimony from students, faculty, and neighbors in support of the Project. (Ex. at pp. 24-36; Tr. at pp. 116-25.) Supporters included a representative of the Berkeley Terrace Neighbors and a representative of St. Patrick's School. (Ex. 36; Tr. at pp. 122, 124.)
34. The Commission heard testimony from several individuals in opposition to the Project, who questioned the University's overall landscaping and stormwater management efforts and expressed concern over the agreements with other neighbors and future development on campus.

#### CONCLUSIONS OF LAW

1. The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104 of the Zoning Regulations, for an amendment to and further processing of its approved campus plan for the Mount Vernon campus to allow construction and use of the proposed Pelham Replacement Project. The Commission is authorized to grant a special exception where, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map, subject to certain conditions specified in § 210. (D.C. Official Code § 6-641.07(g)(2); 11 DCMR § 3104.1.)
2. Based on the Findings of Fact above, the Commission approves the requested special exception for the Pelham Replacement Project. The project is consistent with the Applicant's use of its property for university purposes, is consistent with the Zoning Regulations and Map, and will not tend to adversely affect the use of neighboring property. The project is consistent with the Comprehensive Plan.

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3. The Commission concludes that the Project's location and design, in conjunction with the conditions proffered by the University, will ensure that the Project is not likely to become objectionable due to noise, traffic, or other objectionable conditions.
4. The Commission has given great weight to the issues and concerns raised by the affected ANC.
5. The Commission declines to adopt most of the conditions of approval proffered by the University in conjunction with its agreements reached with the residents of Berkeley Terrace and the St. Patrick's School, because those proposed conditions are beyond the purview of the Commission's jurisdiction in this proceeding.

### **DECISION**

Based on the record before it, the Zoning Commission concludes that the Applicant has met the burden of proof pursuant to 11 DCMR §§ 210 and 3104 and it is therefore **ORDERED** that the further processing application and amendment to the 2000 Campus Plan be **GRANTED** subject to the following conditions:

1. The Pelham Replacement Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 11 and 40 of the record, as modified by the guidelines, conditions, and standards herein.
2. The University shall implement the Enhanced Landscaping Plan, attached to Exhibit 40 of the Record as Exhibit A, no later than December 31, 2007. The plantings shall include coniferous trees, at least six feet tall at the time of installation, to provide a permanent evergreen buffer that will screen the view of the parking lot from the W Street residences.

**VOTE:** 3-0-2 (Carol J. Mitten, Anthony J. Hood, and Gregory N. Jeffries [by absentee ballot]; John G. Parsons not voting, not having participated; Michael G. Turnbull not present, not voting).

### **BY ORDER OF THE D.C. ZONING COMMISSION**

**Each concurring member approved the issuance of this Order.**

**FINAL DATE OF ORDER:** OCT 26 2007

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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. ("ACT"), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.